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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1935

## No. 303

ALICE LEE GROSJEAN, SUPERVISOR OF PUBLIC ACCOUNTS FOR THE STATE OF LOUISIANA, APPELLANT,

*vs.*

AMERICAN PRESS COMPANY, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED JULY 29, 1935.

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[fol. 2]

**IN UNITED STATES DISTRICT COURT, EASTERN LOUISIANA, BATON ROUGE DIVISION**

(Equity)

No. 315

AMERICAN PRESS COMPANY, INC., et al.,

vs.

ALICE LEE GROSJEAN, Supervisor of Public Accounts

PETITION—Filed Sept. 20, 1934

To the Honorable Wayne G. Borah, Judge of the District Court of the United States in and for the Eastern District of Louisiana:

The petition of American Press Company, Inc., Capital City Press, Item Company, Ltd., Journal Publishing Company, Inc., Lafayette Advertiser-Gazette, Inc., McCormick & Company, Inc., News-Star-World Publishing Company, Inc., The Times Picayune Publishing Company and Times Publishing Company, Ltd., each a corporation duly organized and existing under and by virtue of the laws of the State of Louisiana, with respect represents:

I

(a) Petitioner American Press Company, Inc., has its domicile at Lake Charles, in the Parish of Calcasieu, Louisiana, and is the owner and publisher of the "The Lake Charles American-Press", a newspaper published each week-day evening in the City of Lake Charles, La.

(b) Petitioner Capital City Press has its domicile at Baton Rouge, Louisiana, in the Parish of East Baton Rouge, Louisiana, and is the owner and publisher of the "Morning Advocate," a newspaper published each morning except Monday, and the "State Times", a newspaper published each evening except Sunday, in the City of Baton Rouge.

(c) Petitioner Item Company, Ltd., has its domicile at New Orleans, in the Parish of Orleans, Louisiana, and is the owner and publisher of "The New Orleans Item", "The Morning Tribune" and "The Item-Tribune", newspapers published each week-day evening, each week-day morning and each Sunday morning, respectively, in the City of New Orleans.

(d) Petitioner Journal Publishing Company, Inc., has its domicile at Shreveport, in the Parish of Caddo, Louisiana, and is the owner and publisher of "The Shreveport Journal", a newspaper published each week-day evening in the City of Shreveport.

(e) Petitioner Lafayette Advertiser Gazette, Inc., has its domicile at Lafayette, in the Parish of Lafayette, Louisiana, and is the owner and publisher of "The Daily Advertiser", a newspaper published each week-day evening in the City of Lafayette.

(f) Petitioner McCormick & Company, Inc., has its domicile at Alexandria, in the Parish of Rapides, Louisiana, [fol. 3] and is the owner and publisher of the "Alexandria Daily Town Talk", a newspaper published each week-day evening in the City of Alexandria.

(g) Petitioner News-Star-World Publishing Company, Inc., has its domicile at Monroe, in the Parish of Ouachita, Louisiana, and is the owner and publisher of "The Monroe News-Star", "The Monroe Morning World" and "The News-Star-World", newspapers published each week-day evening except Saturday, each week-day morning except Monday and each Sunday morning, respectively, in the City of Monroe.

(h) Petitioner The Times Picayune Publishing Company has its domicile at New Orleans, in the Parish of Orleans, Louisiana, and is the owner and publisher of "The Times Picayune" and "The New Orleans States", newspapers published each week-day morning and evening, respectively, and in combined form on Sunday morning, in the City of New Orleans.

(i) Petitioner Times Publishing Company, Ltd., has its domicile at Shreveport, in the Parish of Caddo, Louisiana, and is the owner and publisher of "The Shreveport

Times", a newspaper published every morning in the City of Shreveport.

II

Defendant Alice Lee Grosjean is the Supervisor of Public Accounts of the State of Louisiana, and is domiciled in the City of Baton Rouge, Parish of East Baton Rouge, Louisiana.

III

Each of the above mentioned newspapers except the "The News-Star-World" and the "Morning Advocate" has a circulation of more than 20,000 copies per week within the State of Louisiana.

IV

There are no newspapers, magazines, periodicals or other publications published within the State of Louisiana and having a circulation of more than 20,000 copies per week except the newspapers owned and published by petitioners as hereinabove set forth. There are, however, published within the State of Louisiana, certain other daily newspapers having a circulation of but slightly less than 20,000 copies per week, and these newspapers compete with the newspapers published by petitioners both as to circulation and advertising.

[fol. 4]

V

There are approximately 120 weekly newspapers published in the State of Louisiana and circulated throughout the State, but none of them has a circulation of as much as 20,000 copies per week. Said weekly newspapers also compete with petitioners both as to circulation and advertising. There is at least one weekly newspaper published and circulated in each of the parishes in which are published the various newspapers of petitioners, and there is direct competition in all parishes between such weekly newspaper and such daily newspaper and this is particularly true as to legal and judicial advertising in all of the parishes except the parishes of Orleans and Lafayette. There are approximately 163 publications published in the State of Louisiana selling and publishing advertising and the 13 newspapers of petitioners are the only ones sought to be

taxed by the provisions of Act 23 of 1934 of the Legislature of Louisiana.

VI

Throughout the United States and in the State of Louisiana there are six principal media of advertising, to-wit: (1) Newspaper advertising; (2) magazine advertising; (3) radio broadcast advertising; (4) outdoor advertising (principally billboards); (5) street car card advertising; and (6) motion picture advertising. The amount spent during the year 1933 throughout the United States for such advertising was approximately the following:

| | |
|---|---|
| (1) Newspaper advertising | $453,000,000.00 |
| (2) Magazine advertising | 137,000,000.00 |
| (3) Radio broadcast advertising | 57,000,000.00 |
| (4) Outdoor advertising | 40,000,000.00 |
| (5) Street car card advertising | 11,000,000.00 |
| (6) Motion picture advertising . . . less than | 10,000,000.00 |
| Total | $708,000,000.00 |

These figures are representative of the situation in the State of Louisiana, with regard to the ratio of revenue derived in said State from the respective media of advertising.

VII

The revenues of petitioners and of newspapers in general and also of other publications are derived almost entirely from monies paid by regular subscribers to, or purchasers of, said publications, and from monies paid for the insertion of advertisements in said publications. The revenue derived from circulation is a substantial part of the [fol. 5] total revenue and varies materially in its ratio to advertising revenue with respect to particular publications.

VIII

The volume of circulation is a factor in fixing advertising rates, but it is only one of several factors. The quality of the circulation, the competitive conditions in the particular territory served by the newspaper, the economic conditions prevailing in the particular territory served and

other factors are of great importance. Thus it frequently results that a daily newspaper with a much smaller volume of circulation than another has advertising rates considerably higher than the advertising rates of the other newspaper having a greater circulation, and obtains an annual income from the advertising published in its columns much greater than that obtained by the other newspaper having a greater circulation.

IX

The Legislature of Louisiana of 1934 passed an Act known as Act No. 23 of 1934, a copy of which is hereto annexed and made part hereof and marked "Exhibit A". Said Act was approved by the Governor of Louisiana on July 12, 1934, and was duly promulgated in the Official Journal of the State of Louisiana on the 21st day of July, 1934. Section 27 of Article III of the Constitution of Louisiana of 1921 provides that "all laws enacted shall go into effect at twelve o'clock noon on the twentieth day after the legislature shall have adjourned." The 1934 session of the Louisiana Legislature adjourned on July 13, 1934.

X

Section 1 of said Act No. 23 of 1934 provides as follows:

"That every person, firm, association or corporation, domestic or foreign, engaged in the business of selling, or making any charge for advertising, whether printed or published in any newspaper, magazine, periodical or publication whatever having a circulation of more than 20,000 copies per week, or displayed and exhibited, or to be displayed and exhibited by means of moving pictures, in the State of Louisiana, shall, in addition to all other taxes and licenses levied and assessed in this State, pay a license tax for the privilege of engaging in such business in this State of two per cent (2%) of the gross receipts of such business."

[fol. 6]

XI

That, while said statute purports to be a measure for the purpose of raising revenue from a license tax on the sale of advertising, said statute is in fact not such a revenue

measure at all, but is simply an attempted reprisal or punishment by the dominant political faction of the State—to which belong the Governor, the heads of various executive departments of the State, and a majority of the members of the State Legislature—against the daily press of the State for its past opposition, and a threat of further reprisals in the event of further or future oppositions; all in direct violation of the prohibitions against abridgement of the freedom of the press in both Federal and State Constitutions.

XII

The State of Louisiana has never heretofore attempted to impose a license tax on newspapers and newspapers have never been subject to the payment of a license tax. The annual revenue to the State of Louisiana from the said tax sought to be imposed by Act 23 of 1934, if enforceable, would be approximately $75,000.00, of which the legislature has dedicated $24,000.00 for cost of collection.

XIII

Petitioners aver that said Act 23 of 1934 is unconstitutional, null and void, and of no effect, for the following reasons, to-wit:

(1) It is violative of the provisions of Section 8 of Article X of the Constitution of Louisiana of 1921, which require that license taxes must be levied on all persons engaged in the trade, business, occupation, vocation or profession upon which a license tax is imposed; and must be based on the gross receipts from such trade, business, etc.

(2) It is violative of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States which provides that no State shall deny to any person within its jurisdiction the equal protection of the laws.

(3) It is violative of the provisions of Section 3 of Article I of the Constitution of Louisiana of 1921, that "no law shall ever be passed to curtail or restrain the liberty of speech or of the press."

(4) It is violative of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United

States, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person [fol. 7] of life, liberty or property without due process of law", which amendment secures against State action that freedom of the press guaranteed by the First Amendment to the Constitution of the United States.

XIV

Act No. 23 of 1934 provides that all persons subject thereto shall, on the first day of October, 1934, and every three months thereafter, file with the Supervisor of Public Accounts a sworn report showing the amount of gross receipts for its business during the preceding three months (except that the report due on October 1, 1934, shall be for the period from August 1 to September 30, 1934), and shall accompany such report with a remittance to said Supervisor of Public Accounts of the amount of the tax due as shown thereby. Said Act further provides that "the Supervisor of Public Accounts is authorized to audit and revise any report filed under this Act and assess additional taxes when and as shown to be due." Said Act further provides that delinquent taxes shall bear interest at the rate of one (1) per cent per month from their due date and that, "in case it becomes necessary to enforce payment of any tax due under this Act, the Supervisor of Public Accounts may institute suit in any court of competent jurisdiction, for the amount of the tax and interest, and may also include in such suit a demand for a penalty of twenty-five (25%) per cent of the amount of the tax and interest, as attorney's fees, which said penalty is hereby imposed upon any taxpayer against whom it is necessary to proceed, and shall be taxed as costs and included in the judgment rendered."

XV

Section 9 of said Act 23 of 1934 provides as follows:

"It shall be unlawful for any person, firm, association or corporation, required to file a report or to pay a tax by this Act or by any regulation issued under authority thereof, or any managing agent or officer of any such firm, association or corporation,

"1. To fail, neglect or refuse to file the aforesaid sworn report at the time and in the manner and form prescribed, or to pay any tax due under this Act prior to its becoming delinquent; and

"2. To make any false statement in said sworn report, or to make any false representations to the Supervisor of Public Accounts as to any tax levied by this Act.

"And any person violating any provision of this Act shall be deemed guilty of a misdemeanor and, on conviction, shall be fined not exceeding Five Hundred Dollars ($500.00) or imprisoned not exceeding six months, or both, at the discretion of the court, for each violation.

[fol. 8] "As to corporations violating this Act, there shall be recovered, at the suit of the district attorney, an amount not exceeding Five Hundred Dollars ($500.00) for each violation.

"The venue of prosecutions and suits under this Act shall be the parish where the report was made or the tax computed by the taxpayer or the parish where the business was transacted or payment therefor received; but as to corporations not maintaining their records in this State, all such proceedings shall be brought at the domicile of their agents for service."

## XVI

Section 10 of said Act 23 of 1934 provides as follows:

"For the purpose of enforcing the collection of the tax levied by this Act, the Supervisor of Public Accounts is hereby specifically authorized and empowered to examine, at all reasonable hours, the books, records and other documents of all persons, firms, associations or corporations who have transacted any of the business described in Section 1 hereof, or who are liable for any tax under this Act, or as to the business of whom there is levied the tax provided by this Act, in order to determine and provide for a correct check and ascertainment of the true amount due. In the event that any person, firm, association or corporation, or the employee, agent or officer of said firm, association or corporation shall refuse to permit such examina-

tion of such books, records and other documents by the Supervisor of Public Accounts as aforesaid, said officer may proceed by rule in chambers or in open court, in or out of term time, in any court of competent jurisdiction, in the parish where such refusal occurred, and require said person, firm, association or corporation, or employee, agent or officer of said firm, association, or corporation, to show cause why the Supervisor of Public Accounts should not be permitted to examine said books or records or documents; and in case said rule be made absolute, the same shall be considered a judgment of the Court and every violation thereof deemed a contempt of the Court to be punished according to law."

XVII

Plaintiffs show that they and each of them are without adequate remedy at law, since to fail to make the report to the Supervisor of Public Accounts required by said Act, or to fail to pay to the Supervisor of Public Accounts the tax sought to be imposed thereby and to have their rights determined in a prosecution for the violation of said Act, or in a suit to recover the tax sought to be imposed thereby, would necessarily postpone the final determination of the matter for many months, or possibly years, and, pending such determination, plaintiffs would be harassed by a multiplicity of suits in the Court of the State of Louisiana for failure to comply with said Act, and would subject themselves not only to the risk of being penalized in large amounts of money on account thereof, but, moreover, the managing agent or officer of each of plaintiffs would subject himself to the risk of numerous fines of Five Hundred ($500.00) Dollars each and of imprisonment for not exceeding six months for each failure to make the report required by said Act, or to pay the tax sought to be imposed thereby.

[fol. 9]

XVIII

Plaintiffs especially show that there is no provision of the law of Louisiana whereby they could pay said tax under protest and bring suit to recover same, and that if they paid said tax no recovery thereof can be had.

XIX

Petitioners allege that said Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, intends to attempt to enforce all of the provisions of said Act 23 of 1934 against petitioners, and will to that end exercise against petitioners all of the powers granted to her by said Act.

XX

Petitioners believe, and therefore allege, that it will not be practicable that a hearing on their application for an interlocutory injunction can be held, and a determination thereof reached, before October 1, 1934, on which date defendant may, under the terms of said Act 23 of 1934, proceed to enforce the provisions thereof; that, unless a temporary restraining order is granted herein, pending such hearing and determination, petitioners will suffer irreparable loss and damage.

XXI

Petitioners aver that this is a suit of a civil nature arising under the Constitution of the United States, brought by petitioners to redress the deprivation, under color of Act 23 of 1934 of the Legislature of Louisiana, of certain rights, privileges and immunities secured to petitioners by the Constitution of the United States; that the tax imposed by said Act as to each of petitioners except American-Press Company, Inc., Lafayette Advertiser-Gazette, Inc., and McCormick & Company, Inc., would amount to more than $3,000 per annum, exclusive of interest, costs, fines and penalties; that as to each of the latter three, the tax imposed by said Act, exclusive of interest and costs, but inclusive of fines and penalties imposed by said Act, would exceed the sum of $3,000 per annum; that it is impossible to place a specific monetary value on the business with which the enforcement of said statute will interfere and which petitioners seek to protect by this proceeding, and the damage caused to petitioners through the enforcement of said Act; but petitioners aver that such value and such damage will each far exceed the sum of $3,000 as to each of them.

[fol. 10] Wherefore, the premises considered, plaintiffs pray:

(1) That Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, be duly cited to appear and answer this petition, and that, after due proceedings had, there be judgment decreeing and setting aside said Act 23 of 1934, as unconstitutional, null and void, and permanently enjoining said Alice Lee Grosjean, her agents, attorneys, representatives, and any and all persons acting under her direction, control and authority, and each of them, from attempting in any manner whatsoever to enforce any of the provisions of said Act as against plaintiffs, or any of them, or from seeking to collect from plaintiffs, or any of them, by suit or otherwise, the taxes sought to be imposed by said Act, or from requiring the plaintiffs, or any of them, to make the reports required by said Act, or from attempting, under the authority of said Act, to examine any of the books, records and other documents of the plaintiffs, or any of them.

(2) That an order to show cause issue herein, directed to said Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, requiring her to appear and show cause why a preliminary injunction should not issue as herein prayed for, and that, on a hearing, plaintiffs be granted an interlocutory injunction pendente lite, enjoining and restraining said Alice Lee Grosjean, Supervisor of Public Accounts, her agents, attorneys, representatives, and any and all persons acting under her direction, control or authority, and each of them, from attempting, in any manner whatsoever, to enforce any of the provisions of said Act against plaintiffs or any of them, or from seeking to collect from plaintiffs, or any of them, by suit or otherwise, the taxes sought to be imposed by said Act, or from requiring the plaintiffs, or any of them, to make the reports required by said Act, or from attempting, under the authority of said Act, to examine any of the books, records and other documents of the plaintiffs, or any of them;

(3) That the hearing on the application for an interlocutory injunction herein be had on a date and at an hour to be fixed by the Court, and that the Court provide a hearing by three Judges as provided by law, after not less than five days' notice thereof to defendant, to the Honorable Oscar K. Allen, Governor of the State of Louisiana, and to the Honorable Gaston L. Porterie, Attorney General of Louisiana.

[fols. 11-14] (4) That a temporary restraining order be granted by the Court instanter, pending hearing on, and determination of, petitioners' application for an interlocutory injunction, enjoining and restraining said Alice Lee Grosjean, Supervisor of Public Accounts, her agents, attorneys, representatives, and any and all persons acting under her direction, control or authority, and each of them, from attempting, in any manner, whatsoever, to enforce any of the provisions of said Act against plaintiffs or any of them, or from seeking to collect from plaintiffs or any of them, by suit or otherwise, the taxes sought to be imposed by said Act or from requiring the plaintiffs, or any of them, to make the reports required by said Act, or from attempting, under the authority of said Act, to examine any of the books, records and other documents of the plaintiffs, or any of them.

(5) Plaintiffs further pray for costs and for all general and equitable relief.

(Sgd.) Bennett C. Clark, Tucker & Mason, Mouton & Davidson, Deutch & Kerrigan & Burke, Spencer, Gidiere, Phelps & Dunbar, Taylor, Porter & Brooks, Thornton, Gist & Richey, Clement M. Moss, Attorneys for Petitioners. (Sgd.) J. J. Davidson, Jr., Eberhard P. Deutsch, John H. Tucker, Jr., Esmond Phelps, S. G. Thornton, Ben B. Taylor, of Counsel.

*Duly sworn to by Clement M. Moss et al. Jurats omitted in printing.*

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[fol. 15] IN UNITED STATES DISTRICT COURT

[Title omitted]

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE—Filed Sept. 20, 1934

Whereas, in the above numbered and entitled cause, it appearing to the undersigned district judge that prima facie the plaintiffs are entitled to the relief sought on the ground that the provisions of Act 23 of the Legislature of Louisiana of 1934 are in violation of the provisions of the Constitution of Louisiana and the Constitution of the

United States, relied upon in said petition, and that the original petition herein contains a prayer for the issuance of a temporary restraining order, pending the hearing and determination of plaintiff's application for the issuance of an interlocutory injunction;

And it appearing to the undersigned district judge that there is danger of immediate, great and irreparable injury, loss and damage being caused to plaintiffs before the hearing and determination of said application for said interlocutory injunction can be had;

It is ordered that, upon the execution by plaintiffs of bonds in the sums hereinafter set forth, with good and solvent sureties and conditioned as required by law, to be approved by the Court, a temporary restraining order issue as prayed for in the petition, enjoining and restraining Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, her agents, attorneys, representatives and any and all persons acting under her direction, control or authority, and each of them, from attempting in any manner whatsoever to enforce the provisions of Act 23 of 1934 of the Legislature of Louisiana, as against plaintiffs or any of them or from seeking to collect from plaintiffs or any of them, by suit or otherwise, the taxes sought to be imposed by said act, or from requiring plaintiffs or any of them to make the reports required by said act, or from attempting, under the authority of said act, to examine any of the books, records or other documents of plaintiffs or any of them.

The amount of the bond to be given by each of the plaintiffs is as follows:

American Press Company, Five Hundred ($500.00) Dollars.

Capital City Press, Twelve Hundred ($1200.00) Dollars.

Item Company, Ltd., Forty-five Hundred ($4500.00) Dollars.

Journal Publishing Company, Inc., One Thousand ($1,000.00) Dollars.

[fol. 16] Lafayette Advertiser-Gazette, Inc., Two Hundred ($200.00) Dollars.

McCormick & Company, Inc., Five Hundred ($500.00) Dollars.

News-Star-World Publishing Co., Inc., Seven Hundred Fifty ($750.00) Dollars.

Times-Picayune Publishing Company, Sixty-five Hundred ($6500.00) Dollars.

Times Publishing Company, Ltd., Seventeen Hundred Fifty ($1750.00) Dollars.

This temporary restraining order is granted because it appears that there is immediate danger of great and irreparable damage being caused to plaintiffs before a hearing and determination of said application for said interlocutory can be had, particularly because of plaintiffs' liability to file reports and make payments under the statute herein claimed to be unconstitutional under the penalty of plaintiffs' being required to pay interest at the rate of 1% per month, plus 25% attorneys fees, on the aggregate amount of the tax and interest thereon, without recourse for a recovery of the amounts paid; and subject further to fines against plaintiffs and fines against and imprisonment of their officers and agents and a multiplicity of suits, both civil and criminal; all unless the defendant Alice Lee Grosjean is, pending such hearing and determination, restrained as herein set forth.

This restraining order shall expire ten days after its entry unless, within that time, the restraining order is extended for a like period for good cause shown, the reasons of said extension being entered of record.

It is further ordered that the application for a preliminary injunction herein be heard in the court room of the United States District Court at New Orleans, Louisiana, on the 29th day of September, 1934, at 10 o'clock A. M., before a statutory court of three judges to be convened under and in accordance with Section 266 of the United States Judicial Code, and that the defendant then and there show cause, if any she have or can, why the preliminary injunction prayed for should not issue; and that immediate notice of not less than five days of said hearing be given to Oscar K. Allen, Governor of the State of Louisiana, and Gaston L. Porterie, Attorney General of the State of Louisiana;

It is further ordered that a copy of this order, certified with the seal of this Court, be served on defendant, Alice Lee Grosjean.

(Signed) Wayne G. Borah, Judge of the District Court of the United States for the Eastern District of Louisiana.

New Orleans, Louisiana, September 20, 1934, 3:24 P. M.

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION OF COUNSEL THAT THE TEMPORARY RESTRAINING ORDER REMAIN IN FULL FORCE AND EFFECT WITHOUT NECESSITY OF RENEWING SAME, ETC.—Filed September 28, 1934

It is hereby stipulated and agreed by and between American Press Company, Inc., and the other plaintiffs in the above entitled and numbered cause, through their undersigned counsel, and Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, defendant in said cause, through her undersigned counsel, that the temporary restraining order issued herein on September 20th, 1934, shall remain in full force and effect, without the necessity of the entry of any formal order renewing same, until the hearing by the statutory court of three Judges of the application of plaintiffs for a preliminary injunction.

(Signed) Spencer, Gidiere, Phelps & Dunbar, Attorneys for Plaintiffs. (Signed) Gaston L. Porterie, Attorney General of La., by Charles J. Rivet, Special Asst. to Attorney General, Attorney for Defendant.

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[fol. 18] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ASSIGNING HEARING FOR PRELIMINARY INJUNCTION BEFORE A STATUTORY COURT OF THREE JUDGES—Filed Oct. 18, 1935

On consideration of the above entitled cause, it is ordered that the application for a preliminary injunction herein be heard in the court room of the United States District Court at New Orleans, Louisiana, on Friday, November 23, 1934, at 10 A. M., before a statutory court of three Judges, under and in accordance with Section 266 of the United States Judicial Code, said court to consist of Honorable Rufus E. Foster, Circuit Judge, and Honorables Ben C. Dawkins and Wayne G. Borah, District Judges, which is hereby convened, and that the defendants be ordered then

and there to show cause, if any they can, why the preliminary injunction prayed for should not issue.

It is further ordered that immediate notice of not less than five days of said hearing be given to Oscar K. Allen, Governor of the State of Louisiana; Gaston L. Porterie, Attorney General of the State of Louisiana, and also to the defendant herein and other parties of record.

(Signed) Wayne G. Borah, Judge.

New Orleans, Louisiana, October 18, 1934.

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[fol. 19] IN UNITED STATES DISTRICT COURT

[Number and title omitted]

NOTE OF EVIDENCE ON BEHALF OF PLAINTIFF—Filed Nov. 23, 1934

Counsel for plaintiffs now offer, introduce and file in evidence the following exhibits:

(a) Affidavit of Frank A. Smith, Secretary-Treasurer of "American Press Co., Inc.", before Robert A. Faxon, Notary Public for the Parish of Calcasieu, Louisiana, under date of October 23, 1934.

(b) Affidavit of Charles P. Manship, President of "Capital City Press", before Robert C. Taylor, Notary Public for the Parish of East Baton Rouge, Louisiana, under date of October 19, 1934.

(c) Affidavit of James M. Thomson, President of "Item Company, Ltd.," before Eberhard P. Deutsch, Notary Public for the Parish of Orleans, Louisiana, under date of October 24, 1934.

(d) Affidavit of Douglas D. Attaway, President of "Journal Publishing Company, Inc.," before John H. Tucker, Jr., Notary Public for the Parish of Caddo, under date of October 30, 1934.

(e) Affidavit of Thomas M. Callahan, Secretary-Treasurer of "Lafayette Advertiser-Gazette, Inc.," before J. J. Davidson, Jr., Notary Public for the Parish of Lafayette, Louisiana, under date of October 29, 1934.

(f) Affidavit of Hunter Jarreau, Secretary Treasurer of "McCormick & Company, Inc.," before Eleanor Twilley, Notary Public for the Parish of Rapides, Lousiana, under date of October 29, 1934.

(g) Affidavit of John D. Ewing, President of "News-Star-World Publishing Corporation," before John H. Tucker, Jr., Notary Public for the Parish of Caddo, Louisiana, under date of October 30, 1934.

(h) Affidavit of Leonard K. Nicholson, President of "Times Picayune Publishing Company", before Sumter D. Marks, Jr., Notary Public for the Parish of Orleans, Louisiana, under date of October 26, 1934.

(i) Affidavit of John D. Ewing, President of "Times Publishing Co., Ltd.," before John H. Tucker, Jr., Notary Public for the Parish of Caddo, Louisiana, under date of October 30, 1934.

(j) Affidavit of Marshall Ballard and J. Walker Ross, before Eberhard P. Deutsch, Notary Public for the Parish of Orleans, Louisiana, under date of October 10, 1934.

(k) Affidavit of Arthur G. Newmyer and John F. Times, Jr., before Eberhard P. Deutsch, Notary Public for the Parish of Orleans, Louisiana, under date of October 31, 1934.

(l) Affidavit of Howard Davis, before William A. Mod-
[fol. 20] ery, Notary Public for the County of New York, New York, under date of November 16, 1934.

(m) Affidavit of Carl W. Ackerman, before J. Edgar Swanin, Notary Public for the County of New York, New York, under date of November 20, 1934.

(n) The bill of complaint and annexed affidavits.

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[fol. 21] IN UNITED STATES DISTRICT COURT

[Number and title omitted]

AFFIDAVIT OF FRANK A. SMITH—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Calcasieu:

Before me, the undersigned authority, duly commissioned and qualified Notary Public in and for the Parish of Cal-

casieu, State of Louisiana, personally came and appeared Frank A. Smith, who, being first sworn, deposes and says:

That he is the Secretary-Treasurer of the "American Press Company, Inc.", one of the plaintiffs in the above entitled and numbered suit, and makes this affidavit for use therein; that said "American Press Company, Inc." is a corporation organized under the laws of the State of Louisiana and domiciled in the Parish of Calcasieu, State of Louisiana, and is the owner and publisher of "The Lake Charles American Press", of which affiant is editor and manager.

That said newspaper is published in the City of Lake Charles, Parish of Calcasieu, Louisiana, on every afternoon except Sundays; that said newspaper has a circulation of more than twenty thousand copies per week within the State of Louisiana; that the revenues of said newspaper are derived almost entirely from monies paid by regular subscribers thereto, or purchasers thereof, and from monies paid for the insertion of advertisements therein; that revenues derived from circulation are a substantial portion of the total revenues, being in excess of twenty (20%) per cent thereof; that said newspaper competes, both for circulation and advertising, with the other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose circulation is less than twenty thousand copies per week; that said newspaper is in direct competition, both as to circulation and advertising, with the "Crowley Signal", a daily newspaper published at Crowley, Acadia Parish, Louisiana, which newspaper has a circulation of less than twenty thousand copies per week; that said competition centers in the various cities and towns between and near Lake Charles and Crowley, Louisiana, in — cities and town both newspapers have [fol. 22] substantial circulation; that said "Lake Charles American Press" has a substantial circulation in the parishes of Allen, Beauregard, Vermilion, Vernon, Jefferson Davis and Acadia, Louisiana, in which are published weekly newspapers which are in direct competition with "The Lake Charles American Press" both as to circulation and advertising; that there are published in DeQuincy, Calcasieu Parish, Louisiana, the "News" and at Sulphur, Calcasieu Parish, Louisiana, the "Southwest Builder", weekly newspaper, each having a circulation of less than twenty

thousand copies per week, and both of which are in direct competition with "The Lake Charles American Press".

That the gross receipts for the period from October 1st, 1933, to September 30th, 1934, given month by month, from advertising appearing in the aforesaid newspaper published by American Press Company, Inc., are as follows:

| | |
|---|---|
| October, 1933 | $5,222.56 |
| November, 1933 | 5,771.27 |
| December, 1933 | 7,156.32 |
| January, 1934 | 5,997.77 |
| February, 1934 | 5,136.33 |
| March, 1934 | 6,790.14 |
| April, 1934 | 7,171.13 |
| May, 1934 | 9,472.94 |
| June, 1934 | 8,018.19 |
| July, 1934 | 7,585.43 |
| August, 1934 | 7,040.34 |
| September, 1934 | 7,250.84 |
| Total of 12-months period ending September 30, 1934 | $82,613.26 |

That there is every indication that the gross receipts from advertising of the newspaper aforesaid for the twelve-month period ending September 30th, 1935, will be substantially in excess of the gross advertising revenue of such newspaper for the twelve-month period ending September 30th, 1934.

(Signed) Frank A. Smith.

Sworn to and subscribed before me this 23 day of October, 1934.

(Signed) Robert R. Faxon, Notary Public. (Seal.)

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[fol. 23] IN UNITED STATES DISTRICT COURT

[Number and title omitted]

AFFIDAVIT OF CHARLES P. MANSHIP—Filed Nov. 23rd, 1934

STATE OF LOUISIANA,

Parish of East Baton Rouge:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public, in and for the Parish of East Baton Rouge, State of Louisiana, personally came and

appeared Charles P. Manship, who being first duly sworn deposes and says:

That he is the president of Capital City Press, one of the plaintiffs in the above entitled and numbered suit, and makes this affidavit for use therein; that said Capital City Press is a corporation organized and existing under the laws of the State of Louisiana and domiciled in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, and is the owner and publisher of the following newspapers: "State Times" and "Morning Advocate."

That the said State Times is published in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, on every evening, except Sundays, and the said Morning Advocate is published in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, on every morning, except Mondays; that the said State Times has a circulation of more than twenty thousand (20,000) copies per week within the State of Louisiana, but the weekly circulation of the said Morning Advocate within the State of Louisiana is slightly less than twenty thousand copies; that the revenues of the said newspapers are derived almost entirely from monies paid by regular subscribers to or purchasers thereof and from moneys paid for insertion of advertisements therein.

That the gross receipts for the period from October 1, 1933, to September 30, 1934, given month by month, from advertising appearing in the aforesaid newspapers published by Capital City Press are as follows:

| | |
|---|---|
| October, 1933 | $19,495.94 |
| [fol. 24] November, 1933 | 17,682.44 |
| December, 1933 | 16,822.88 |
| January, 1934 | 13,970.48 |
| February, 1934 | 15,335.34 |
| March, 1934 | 18,200.37 |
| April, 1934 | 22,352.86 |
| May, 1934 | 20,983.35 |
| June, 1934 | 20,472.86 |
| July, 1934 | 19,314.65 |
| August, 1934 | 18,530.41 |
| September, 1934 | 18,222.39 |
| Total for 12 month period ending September 30, 1934 | $221,384.02 |

That there is every indication that the gross receipts from advertising of the newspapers aforesaid for the twelve month period ending September 30, 1935, will be in excess of the gross advertising revenue of such newspapers for the twelve month period ending September 30, 1934.

That since both the State Times and the Morning-Advocate are owned and published by Capital City Press, the books of Capital City Press do not segregate the revenues of said two papers, but all advertisements published in either of said papers are also published in the same manner and to the same extent in the other paper, except as to legal and judicial advertisements, which are published only in the State Times.

That the circulation of the said State Times is slightly in excess of 60,000 copies per week, and the circulation of the said Morning Advocate is slightly less than 20,000 copies per week; that, therefore, the weekly circulation of the Morning Advocate is less than one-fourth of the weekly circulation of the State Times, but, as previously stated, all legal and judicial advertisements published by the Capital City Press are published in the State Times alone and the above gross receipts of the said Capital City Press, given month by month, include the receipts from said legal and judicial advertisements inserted in the said State Times alone; that considering the volume of the circulation of said two newspapers, the quality of the two publications and the fact that all legal and judicial advertisements are published only in the State Times, if said gross revenues were segregated as between said two newspapers eighty-five per cent (85%) of said revenues would be allocated to the State Times and fifteen per cent (15%) of said revenues would be allocated to the Morning Advocate.

[fol. 25] That the revenues derived from circulation are a substantial portion of the total revenues, being in excess of eighten per cent (18%) thereof; that said newspapers compete both for circulation and advertisement with other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose circulation is less than twenty thousand copies per week.

That said newspapers are in direct competition, both as to circulation and advertising, with the "Hammond Courier", a daily newspaper published at Hammond, in the Parish of Tangipahoa, Louisiana, which newspaper has a

circulation of less than twenty thousand (20,000) copies per week.

That in the parishes adjoining or near the parish of East Baton Rouge, in which the State Times and Morning Advocate have circulation, there are published the following weekly newspapers, which weekly newspapers are published in the places shown opposite their respective names, viz:

The Hammond Vindicator, Hammond, Louisiana.
Southern Watchman, Clinton, Louisiana.
The Democrat, St. Francisville, Louisiana.
The Observer, Port Allen, Louisiana.
The Donaldsonville Chief, Donaldsonville, Louisiana.
Courier Journal, New Roads, Louisiana.
The Pointe Coupee Banner, New Roads, Louisiana.
The Iberville South, Plaquemine, Louisiana.
The Clarion News, Opelousas, Louisiana.
The Herald, Opelousas, Louisiana.
The Gonzales Weekly, Gonzales, Louisiana.
The News, Denham Springs, Louisiana.

That none of the said above named weekly newspapers have a circulation as great as twenty thousand (20,000) copies per week, and all of them are in direct competition with the said State Times and Morning Advocate, both as to circulation and advertising.

(Signed) Chas. P. Manship.

Sworn to and subscribed before me this 19th day of October, 1934. (Signed) Robert C. Taylor, Notary Public. (Seal.)

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[fol. 26] IN UNITED STATES DISTRICT COURT

[Title Omitted]

AFFIDAVIT OF JAMES M. THOMPSON—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public in and for the Parish

of Orleans, State of Louisiana, personally came and appeared James M. Thomson, who, being first duly sworn deposes and says:

That he is President of the "Item Company, Ltd.," one of the plaintiffs in the above entitled and numbered suit, and makes this affidavit for use therein; that said "Item Company, Ltd.," is a corporation organized under the laws of the State of Louisiana and domiciled in the Parish of Orleans, State of Louisiana, and is the owner and publisher of the following newspapers: "The New Orleans Item", published each week-day afternoon; "The Morning Tribune", published each week-day morning, and "The Item-Tribune", published each Sunday morning,.

That each of said newspapers is published in the City of New Orleans, Parish of Orleans, Louisiana, and each has a circulation of more than twenty thousand copies per week within the State of Louisiana; that the revenues of said newspapers are derived entirely from monies paid by regular subscribers thereto, or purchasers thereof, and from monies paid for the insertion of advertisements therein; that the revenues derived from circulation are a substantial portion of the total revenues, being in excess of twenty (20%) thereof; that said newspapers compete, both for circulation and advertising with other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose circulation is less than twenty thousand copies per week; that said newspapers have a circulation in practically every parish of the State of Louisiana in which daily and weekly newspapers are published, and is in direct competition with said publications; that the newspapers published by the Item Company, Ltd., have an average circulation of 6,250 copies per week in the Parish of Tangipahoa, Louisiana, in which "The Hammond Courier", a daily newspaper with a total average circulation of 13,446 copies per week is published; that there is accordingly substantial competition between said newspapers.

That the gross receipts for the period from October 1st, [fol. 27] 1933, to September, 1934, given month by month, from advertising in the aforesaid newspapers published by the Item Company, Ltd., were as follows:

| | |
|---|---|
| 1933. | |
| October | $ 85,293.06 |
| November | 87,693.02 |
| December | 101,131.34 |
| 1934. | |
| January | 88,419.80 |
| February | 71,430.52 |
| March | 91,851.55 |
| April | 78,919.49 |
| May | 87,317.77 |
| June | 81,437.13 |
| July | 75,670.18 |
| August | 76,541.97 |
| September | 68,530.34 |
| Total for twelve-month period ending September 30, 1934 | $994,236.17 |

It is probable that the gross receipts from advertising of the newspapers aforesaid for the twelve-month period ending September 30, 1935, will be substantially in excess of the gross advertising revenue of such newspapers for the twelve-month period ending September 30, 1934.

(Signed) James M. Thomson.

Subscribed and sworn to before me this 24th day of October, 1934. (Signed) Eberhard P. Deutsch, Notary Public. (Seal.)

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[fol. 28] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF DOUGLAS ATTAWAY—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Caddo:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public, in and for the Parish of Caddo, State of Louisiana personally came and appeared Douglas Attaway, who being first duly sworn, deposed and says:

That he is the President of The Journal Publishing Company, Inc., one of the plaintiffs in the above entitled and numbered suit, and makes this affidavit for use therein.

That the said The Journal Publishing Company, Inc., is a corporation organized under the laws of the State of Louisiana and domiciled in the Parish of Caddo, State of Louisiana, and is the owner and publisher of the following newspaper: Shreveport Journal.

That the said newspaper is published in the City of Shreveport, Parish of Caddo, State of Louisiana, on every afternoon, except Sundays; that said newspaper has a circulation of more than twenty thousand copies per week within the State of Louisiana; that the revenues of said newspaper are derived almost entirely from monies paid by regular subscribers thereto or purchasers thereof, and from monies paid for the insertion of advertisements therein; that the revenues derived from circulation are a substantial portion of the total revenues, being in excess of twenty per cent (20%) thereof; that said newspaper competes, both for circulation and advertising, with the other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose weekly circulation is less than twenty thousand copies per week; that said newspaper has a substantial circulation in the Town of Ruston, Parish of Lincoln, in which is published the Ruston Leader, a daily newspaper having a weekly circulation of less than twenty thousand copies per week, and is in direct competition with said Ruston Leader, both as to circulation and advertising; that there is published in the City of Shreveport, Caddo Parish, Louisiana, a semi-weekly publication called the Caddo Gazette, which is published every Tuesday and Friday by the Gazette Publishing Company, and the circulation of the said the Caddo Gazette is less than twenty thousand copies per week, that the said The Caddo Gazette is in direct competition with the Shreveport Journal, both as to circulation and advertising, particularly since it has been [fol. 29] declared a newspaper of general circulation by judgment of the First Judicial District Court in and for Caddo Parish, Louisiana.

That in all of the parishes of North Louisiana in which the Shreveport Journal has circulation, there are published

approximately thirty weekly and semi-weekly newspapers, all of which are in direct competion with the said Shreveport Journal, both as to circulation and advertising; that included in the list of weekly and semi-weekly newspapers are the following, published at the places shown opposite their respective names:

Bienville Democrat, Arcadia, La.
Morehouse Enterprise, Bastrop, La.
Bossier Banner, Benton, La.
Journal, Bernice, La.
Planters Press, Bossier City, La.
Record, Bunkie, La.
Chronicle, Colfax, La.
Citizen, Coushatta, La.
Enterprise, DeRidder, La.
Gazette, Farmerville, La.
Patriot, Glenmora, La.
News, Haynesville, La.
Guardian Journal, Homer, La.
Jackson Independent, Jonesboro, La.
Leader, Leesville, La.
Industrial Democrat, Leesville, La.
Interstate Progress, Logansport, La.
Enterprise, Mansfield, La.
Sabine Index, Many, La.
Herald, Minden, La.
Signal Tribune, Minden, La.
Enterprise, Natchitoches, La.
Times, Natchitoches, La.
American, Oakdale, La.
Journal, Oakdale, La.
Rapides Gazette, Pineville, La.
Progress, Plain Dealing, La.
Caddo Citizen, Vivian, La.
News-American, Winnfield, La.
Winn Parish Enterprise, Winnfield, La.

That the gross receipts for the period from October 1, 1933, to September 30th, 1934, given by month, from advertising appearing in the aforesaid newspaper published by The Journal Publishing Company, are as follows:

| | |
|---|---|
| 1933. | |
| October | $18,418.70 |
| November | 18,403.73 |
| December | 20,333.64 |
| 1934. | |
| January | 16,084.72 |
| February | 14,903.19 |
| March | 21,798.19 |
| April | 21,284.18 |
| May | 22,815.60 |
| June | 19,317.88 |
| July | 16,857.52 |
| August | 17,493.64 |
| September | 18,143.48 |
| Total of twelve month period ending September 30, 1934 | $225,854.47 |

That there is every indication that the gross receipts from advertising of the newspapers aforesaid for the twelve-month period ending September 30, 1935, will be substantially in excess of the gross advertising revenue of such newspaper for the twelve-month period ending September 30, 1934.

(Signed) Douglas Attaway.

Sworn to and subscribed before me this 30th day of October, 1934.

(Signed) John H. Tucker, Notary Public.

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[fol. 30] IN UNITED STATES DISTRICT COURT

[Number and title omitted]

AFFIDAVIT OF THOMAS M. CALLAHAN—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Lafayette:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public, in and for the Parish of Lafayette, State of Louisiana, personally came and ap-

peared Thomas M. Callahan, who being first duly sworn, deposes and says:

That he is the Secretary-Treasurer of the Lafayette Advertiser, Gazette, Inc., one of the plaintiffs in the above entitled and numbered suit; and makes this affidavit for use therein. That he is editor and publisher of the Daily Advertiser, a newspaper owned and published by the said Lafayette Advertiser Gazette, Inc., which said corporation is organized under the laws of the State of Louisiana and domiciled in the Parish of Lafayette, State of Louisiana.

That said newspaper is published in the City of Lafayette, Parish of Lafayette, Louisiana, on every afternoon, except Sundays; that said newspaper has a circulation of more than twenty thousand copies per week within the State of Louisiana; that the revenues of said newspaper are derived almost entirely from monies paid by regular subscribers to or purchasers thereof, and from monies paid for the insertion of advertisements therein; that the revenues derived from circulation are a substantial portion of the total revenues, being in excess of twenty per cent (20%) thereof.

That the gross revenues for the period from October 1st, 1933, to September 30th, 1934, given month by month, from advertising appearing in the aforesaid newspaper by the Lafayette Advertiser Gazette, Inc., are as follows:

| | | |
|---|---|---|
| [fol. 31] October, 1933 | $3,264.44 | |
| November, 1933 | 6,561.97 | Note "A" |
| December, 1933 | 3,400.72 | |
| January, 1934 | 2,696.53 | |
| February, 1934 | 2,403.24 | |
| March, 1934 | 3,175.36 | |
| April, 1934 | 3,217.72 | |
| May, 1934 | 3,699.36 | |
| June, 1934 | 3,249.97 | |
| July, 1934 | 2,665.13 | |
| August, 1934 | 2,795.35 | |
| September, 1934 | 3,465.96 | |
| Total of 12-month period ending September 30, 1934 | $40,595.75 | |

Note "A"—Includes charges for publication of City and State delinquent taxes.

That there is every indication that the gross revenues from advertising of the newspaper aforesaid for the twelve-month period ending September 30th, 1935, will be substantially in excess of the gross advertising revenue of such newspaper for the twelve-month period ending September 30th, 1934.

That said newspaper competes, both for circulation and advertising, with the other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose weekly circulation is less than twenty thousand copies per week; that the Daily Advertiser, published by the Lafayette Advertiser Gazette, Inc., has a circulation in the Parish of Acadia, Louisiana, and in particular in the City of Crowley and the town of Rayne in the Parish of Acadia. That the Daily and Weekly Crowley Signal are published in the City of Crowley, Louisiana, both of which newspapers have a weekly circulation of less than twenty thousand copies per week and the said Daily Crowley Signal and Weekly Crowley Signal are both in direct competition with the said Daily Advertiser, both as to circulation and advertising. That there is published in the town of Rayne, in Acadia Parish, the Rayne Tribune, a weekly newspaper which is in direct competition with the Daily Advertiser, both as to circulation and advertising. That the Daily Advertiser maintains a delivery system in Rayne and in Crowley, Louisiana, and circulates throughout Acadia Parish. That the Crowley Signal circulates in Lafayette Parish.

There is published in the town of New Iberia, Parish of Iberia, Louisiana, the Enterprise and the Iberian, both [fol. 32] weekly newspapers having a circulation of less than twenty thousand copies per week. That the Lafayette Advertiser maintains a delivery system in New Iberia and the Enterprise and Iberian are both in direct competition with the Daily Advertiser, both as to circulation and advertising.

There is published in the town of St. Martinsville, Parish of St. Martin, Louisiana, The Banner and The Messenger, both weekly newspapers having a circulation of less than twenty thousand copies per week. That the Lafayette Advertiser maintains a delivery system in St. Martinsville and The Banner and The Messenger are both in direct competition with the Daily Advertiser, both as to circulation and advertising.

There is published in the town of Abbeville, Parish of Vermilion, Louisiana, the Abbeville Meridional and the Abbeville Progress, both weekly newspapers having a circulation of less than twenty thousand copies per week. That the Lafayette Advertiser maintains a delivery system in Abbeville and the Abbeville Meridional and the Abbeville Progress are both in direct competition with the Daily Advertiser, both as to circulation and advertising.

There is published in the town of Opelousas, Parish of St. Landry, Louisiana, the Clarion News and the Herald, both weekly newspapers having a circulation of less than twenty thousand copies per week. That the Lafayette Advertiser maintains a delivery system in Opelousas and the Clarion News and the Herald are both in direct competition with the Daily Advertiser, both as to circulation and advertising.

There is published in the town of Jeanerette, Parish of Iberia, Louisiana, the Jeanerette Progress, a weekly newspaper having a circulation of less than twenty thousand copies per week. That the Lafayette Advertiser maintains a delivery system in Jeanerette and the Jeanerette Progress is in direct competition with the Daily Advertiser, both as to circulation and advertising.

That a substantial part of the circulation of the Daily Advertiser is in the parishes of St. Martin, Acadia, Iberia, Vermilion and St. Landry, which parishes completely sur- [fol. 33] round the Parish of Lafayette and in each of said parishes papers are published with circulation of less than twenty thousand copies per week, all in direct and substantial competition with the Daily Advertiser, both as to circulation and advertising.

(Signed) Thomas M. Callahan.

Sworn to and subscribed before me this 29 day of October, A. D. 1934.

(Signed) J. J. Davidson, Jr., Notary Public. (Seal.)

[fol. 34] IN UNITED STATES DISTRICT COURT

[Number and title omitted]

AFFIDAVIT OF HUNTER JARREAU—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Rapides:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public in and for the Parish of Rapides, State of Louisiana, personally came and appeared Hunter Jarreau, who being first duly sworn, deposes and says:

That he is Secretary-Treasurer and Manager of McCormick & Company, Inc., one of the plaintiffs in the above numbered and entitled suit, and makes this affidavit for use therein; that said McCormick & Company, Inc., is a corporation organized under the laws of the State of Louisiana and domiciled in thte Parish of Rapides, State of Louisiana, and is the owner and publisher of the following newspaper, Alexandria Daily Town Talk; that said newspaper is published in the City of Alexandria, Parish of Rapides, Louisiana, on every afternoon except Sundays; that said newspaper has a circulation of more than twenty thousand copies per week within the State of Louisiana; that the revenues of said newspaper are derived almost entirely from moneys paid by regular subscribers to or purchasers thereof, and from moneys paid for the insertion of advertisements therein; that the revenues derived from circulation are a substantial portion of the total revenues, being in excess of twenty per cent thereof; that said newspaper competes, both for circulation and advertising, with the other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose weekly circulation is less than twenty thousand copies per week; that said newspaper has a substantial circulation in the Town of Glenmora, Parish of Rapides, in which is published the Glenmora Patriot, a weekly newspaper having a weekly circulation of less than twenty thousand copies per week, and is in direct competition with said Glenmora Patriot, both as to circulation and advertising, and including legal and judicial advertising; that the trade

area of the Alexandria Daily Town Talk, by which affiant means the area in which there is the most direct and substantial competition both as to circulation and advertising between the Alexandria Daily Town Talk and other newspapers, includes the following parishes in Louisiana; Rapides, Grant, Allen, Avoyelles, LaSalle, Vernon, Natchitoches, Winn, St. Landry, Evangeline and Catahoula, and that in said parishes are published certain newspapers at [fol. 35] the places and having the names hereinafter designated:

Bunkie Record, Bunkie, Avoyelles Parish, Louisiana.
Colfax Chronicle, Colfax, Grant Parish, Louisiana.
New Era, Efinice, Evangeline Parish, Louisiana.
Glenmora Patriot, Glenmora, Rapides Parish, Louisiana.
Catahoula News, Harrisonburg, Catahoula Parish, Louisiana.
Jena Times, Jena, LaSalle Parish, Louisiana.
Jonesville Booster, Jonesville, Catahoula Parish, Louisiana.
Kinder Tribune, Kinder, Allen Parish, Louisiana.
Leesville Leader, Leesville, Vernon Parish, Louisiana.
The Weekly News, Marksville, Avoyelles Parish, Louisiana.
Natchitoches Enterprise, Natchitoches, Natchitoches Parish, La.
Catholic Herald, Alexandria, Rapides Parish, Louisiana.
Oakdale American, Oakdale, Allen Parish, Louisiana.
Oakdale Journal, Oakdale, Allen Parish, Louisiana.
Opelousas Clarion-News, Opelousas, St. Landry Parish, Louisiana.
Pineville Gazette, Pineville, Rapides Parish, Louisiana.
Winnfield News-American, Winnfield, Winn Parish, Louisiana.
Winn Enterprise, Winnfield, Winn Parish, Louisiana.
Natchitoches Times, Natchitoches Parish, Louisiana.

that each of the above mentioned nineteen newspapers has a circulation of less than twenty thousand copies per week, and that there is competition between each of said papers and the Alexandria Daily Town Talk, both as to advertising and circulation; that said competition to which the Alexandria Daily Town Talk is subject is most substantial and direct with such of the above named papers as are pub-

lished in the following towns in Louisiana, Marksville, Winnfield, Bunkie, Jena, Colfax, Glenmora and Oakdale.

That the gross receipts for the period from October 1, 1933, to September 30, 1934, given month by month, from advertising in the Alexandria Daily Town Talk, published by McCormick & Company, Inc., are as follows:

| | |
|---|---|
| October, 1933 | $7,057.30 |
| November, 1933 | 8,022.36 |
| December, 1933 | 8,298.84 |
| January, 1934 | 7,417.07 |
| February, 1934 | 7,306.84 |
| March, 1934 | 6,721.72 |
| April, 1934 | 7,338.97 |
| May, 1934 | 8,297.36 |
| June, 1934 | 8,824.92 |
| July, 1934 | 8,074.56 |
| August, 1934 | 8,226.50 |
| September, 1934 | 7,425.85 |
| Total in twelve months ending September 30, 1934 | $93,012.29 |

That there is every indication that the gross receipts from advertising of said Alexandria Daily Town Talk for the twelve months period ending September 30, 1935, will be substantially in excess of the gross advertising revenue of such newspaper for the twelve-months period ending September 30, 1934.

(Signed) Hunter Jarreau.

Sworn to and subscribed before me this 29 day of October, 1934.

(Signed) Eleanor Twilley, Notary Public, Rapides Parish, Louisiana. (Seal.)

[fol. 36] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JOHN D. EWING—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Caddo:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public, in and for the Parish of Caddo, State of Louisiana, personally came and appeared, John D. Ewing, who being first duly sworn, deposes and says:

That he is President of the News-Star World Publishing Corporation, one of the plaintiffs in the above entitled and numbered suit, and makes this affidavit for use therein.

That the News-Star World Publishing Corporation is a corporation organized under the laws of the State of Louisiana and domiciled in the Parish of Ouachita, State of Louisiana, and is the owner and publisher of the following newspapers published at Monroe, Ouachita Parish, Louisiana: The Monroe News-Star, which is published every week day evening except Saturday, with a circulation of more than twenty thousand copies per week within the State of Louisiana; the Monroe Morning World, which is published each week day morning except Monday, with a circulation of more than twenty thousand copies per week within the State of Louisiana; and the News-Star World, published each Sunday morning, with a circulation of less than twenty thousand copies per week within the State of Louisiana.

That the revenues of said newspapers are derived almost entirely from monies paid by regular subscribers thereto or purchasers thereof, and from monies paid for the insertion of advertisements therein; that the revenues derived from circu*al*tion are a substantial portion of the total revenues, being in excess of twenty per cent (20%) thereof; that said newspapers compete, both for circulation and advertising, with the other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose weekly circulation is less than twenty thousand copies per week; that said newspapers have a substantial circulation in the Town of Ruston, Parish of Lincoln, in which is published the Ruston Leader, a

daily newspaper having a weekly circulation of less than twenty thousand copies per week, which is in direct competition with the said Monroe News-Star, said Monroe [fol. 37] Morning World, and said News-Star World, both as to circulation and advertising.

That in all of the parishes of North Louisiana in which the Monroe News-Star, the Monroe Morning World, and the News-Star World have circulation, there are published approximately eighteen weekly and semi-weekly newspapers, all of which are in direct competition with the said Monroe News-Star, the Monroe Morning World, and the News-Star World, and both as to circulation and advertising; that included in the list of weekly and semi-weekly newspapers are the following, published at the places shown opposite their respective names:

Bienville Democrat, Arcadia, La.
Morehouse Enterprise, Bastrop, La.
Journal, Benton, La.
Gazette, Farmerville, La.
Concordia Sentinel, Ferriday, La.
Catahoula News, Harrisonburg, La.
Times, Jena, La.
Jackson Independent, Jonesboro, La.
Booster, Jonesboro, La.
Banner-Democrat, Lake Providence, La.
Herald, Minden, La.
Signal Tribune, Minden, La.
West Carroll Gazette, Oak Grove, La.
Richland Beacon-News, Rayville, La.
Leader, Ruston, La.
Madison Journal, Tallulah, La.
Ouachita Citizen, West Monroe, La.
Franklin Sun, Winnsboro, La.

That the gross receipts for the period from October 1, 1933, to September 30th, 1934, given month by month, from advertising appearing in the aforesaid newspapers published by the News-Star-World Publishing Co., are as follows:

1933.

| | |
|---|---|
| October | $18,191.66 |
| November | 13,397.41 |
| December | 11,001.10 |

| 1934. | |
|---|---|
| January | 9,940.56 |
| February | 11,018.04 |
| March | 14,192.54 |
| April | 15,577.79 |
| May | 18,172.01 |
| June | 15,713.38 |
| July | 12,203.58 |
| August | 12,516.09 |
| September | 13,612.46 |
| Total of twelve-month period ending September 30, 1934 | $165,536.62 |

[fol. 38] That there is every indication that the gross receipts from advertising of the newspapers aforesaid for the twelve-month period ending September 30, 1935, will be substantially in excess of the gross advertising revenue of such newspapers for the twelve-month period ending September 30, 1934.

(Signed) John D. Ewing.

Sworn to and subscribed before me this 30th day of October, 1934.

(Signed) John H. Tucker, Jr., Notary Public. (Seal.)

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[fol. 39] IN UNITED STATES DISTRICT COURT

[Number and title omitted]

AFFIDAVIT OF LEONARD K. NICHOLSON—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public in and for the Parish of Orleans, State of Louisiana, personally came and appeared Leonard K. Nicholson, who, being first duly sworn, deposes and says:

That he is President of The Times Picayune Publishing Company, one of the plaintiffs in the above entitled and numbered suit, and makes this affidavit for use therein.

That the said The Times Picayune Publishing Company is a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, Parish of Orleans, State of Louisiana, and is the owner and publisher of "The Times Picayune" and "The New Orleans States", newspapers published each week-day morning and evening, respectively, and in combined form on Sunday morning, in the City of New Orleans.

That each of said newspapers has a circulatlon of more than 20,000 copies per week within the State of Louisiana; that the revenues of said newspapers are derived almost entirely from monies paid by regular subscribers thereto or purchasers thereof, and from monies paid for the insertion of advertisements therein; that the revenues derived from circulation are a substantial portion of the total revenues, being in excess of twenty (20%) per cent thereof.

That both of said newspapers compete, both for circulation and advertising, with the other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose circulation is less than 20,000 copies per week; that Hammond, Louisiana, is located in the Parish of Tangipahoa and in Hammond is published a daily newspaper known as "The Hammond Courier"; that "The Times Picayune" has a circulation in Hammond of approximately 5,200 copies per week and in the Parish of Tangipahoa of approximately 15,000 copies per week; that Crowley, Louisiana, is located in the Parish of Acadia and in Crowley is published a daily newspaper known as "The Crowley Signal"; that "The Times Pica- [fol. 40] yune" has a circulation in Crowley of approximately 4,000 copies per week and in the Parish of Acadia of approximately 6,500 copies per week; that the total circulation of "The Hammond Courier" is approximately 18,630 copies per week, and the total circulation of "The Crowley Signal" is approximately 13,182 copies per week; that "The Times Picayune" is in direct competition, both as to circulation and advertising, with "The Hammond Courier" and with "The Crowley Signal."

That the gross receipts for the period from October 1, 1933, to September 30, 1934, given month by month, from advertising appearing in the aforesaid newspapers published by The Times Picayune Publishing Company are as follows:

| | |
|---|---|
| 1933 | |
| October | $135,119.56 |
| November | 148,136.31 |
| December | 154,601.62 |
| 1934 | |
| January | 145,015.85 |
| February | 125,735.36 |
| March | 136,023.67 |
| April | 157,192.55 |
| May | 157,093.24 |
| June | 152,911.96 |
| July | 146,479.20 |
| August | 131,006.99 |
| September | 129,991.36 |
| Total for the period from October 1, 1933, to September 30, 1934 | $1,718,307.67 |

That there is every indication that the gross receipts from advertising of the newspapers aforesaid for the twelve-month period ending September 30, 1935, will be substantially in excess of the gross advertising revenues of such newspapers for the twelve-month period ending September 30, 1934.

(Signed) L. K. Nicholson.

Sworn to and subscribed before me this 27th day of October, 1934.

(Signed) Sumter D. Marks, Jr., Notary Public.
(Seal.)

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[fol. 41] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF JOHN D. EWING—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Caddo:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public, in and for the Parish of Caddo, State of Louisiana, personally came and appeared

John D. Ewing, who being first duly sworn, deposes and says:

That he is the President of The Times Publishing Company, Ltd., one of the plaintiffs in the above entitled and numbered suit, and makes this affidavit for use therein.

That the said The Times Publishing Company, Ltd., is a corporation organized under the laws of the State of Louisiana, and domiciled in the Parish of Caddo, State of Louisiana, and is the owner and publisher of the following newspaper: The Shreveport Times.

That said newspaper is a morning newspaper published seven days of the week in the City of Shreveport, Parish of Caddo, Louisiana; that said newspaper has a circulation of more than twenty thousand copies per week within the State of Louisiana; that the revenues of said newspaper are derived almost entirely from monies paid by regular subscribers thereto or purchasers thereof, and from monies paid for the insertion of advertisements therein; that the revenues derived from circulation are a substantial portion of the total revenues, being in excess of twenty per cent (20%) thereof; that said newspaper competes, both for circulation and advertising, with the other newspapers, both daily and weekly, and periodicals published within the State of Louisiana, including those whose weekly circulation is less [fol. 42] than twenty thousand copies per week; that said newspaper has a substantial circulation in the Town of Ruston, Parish of Lincoln, in which is published the Ruston Leader, a daily newspaper having a weekly circulation of less than twenty thousand copies per week, and is in direct competition with said Ruston Leader, both as to circulation and advertising; that there is published in the City of Shreveport, Caddo Parish, Louisiana, a semi-weekly publication called "The Caddo Gazette", which is published every Tuesday and Friday by the Gazette Publishing Company, and the circulation of the said The Caddo Gazette is in direct competition with The Shreveport Times, both as to circulation and advertising, particularly since it has been declared a newspaper of general circulation by judgment of the First Judicial District Court in and for Caddo Parish, Louisiana.

That in all of the parishes of north Louisiana in which The Shreveport Times has circulation, there are published approximately thirty (30) weekly and semi-weekly news-

papers, all of which are in direct competition with the said The Shreveport Times, both as to circulation and advertising; that included in the list of weekly and semi-weekly newspapers are the following, published at the places shown opposite their respective names:

Bienville Democrat, Arcadia, La.
Morehouse Enterprise, Bastrop, La.
Bossier Banner, Benton, La.
Journal, Bernice, La.
Planters Press, Bossier City, La.
Record, Bunkie, La.
Chronicle, Colfax, La.
Citizen, Coushatta, La.
Enterprise, DeRidder, La.
Gazette, Farmerville, La.
Patriot, Glenmore, La.
News, Haynesville, La.
Guardian Journal, Homer, La.
Jackson Independent, Jonesboro, La.
Leader, Leesville, La.
Industrial Democrat, Leesville, La.
Interstate Progress, Logansport, La.
Enterprise, Mansfield, La.
Sabine Index, Many, La.
Herald, Minden, La.
Signal-Tribune, Minden, La.
Enterprise, Natchitoches, La.
Times, Natchitoches, La.
American, Oakdale, La.
Journal, Oakdale, La.
Rapides Gazette, Pineville, La.
Progress, Plain Dealing, La.
Caddo Citizen, Vivian, La.
News-American, Winnfield, La.
Winn Parish Enterprise, Winnfield, La.

[fol. 43] That the gross receipts for the period from October 1, 1933, to September 30th, 1934, given month by month, from advertising appearing in the aforesaid newspaper published by The Times Publishing Co., Ltd., are as follows:

Shreveport Times

| | |
|---|---|
| October | $29,515.00 |
| November | 27,580.79 |
| December | 29,585.47 |
| January | 24,801.75 |
| February | 23,494.39 |
| March | 29,754.63 |
| April | 31,386.93 |
| May | 32,831.23 |
| June | 30,873.26 |
| July | 27,983.42 |
| August | 27,168.06 |
| September | 32,015.31 |
| Total of 12-month period ending September 30, 1934 | $346,990.24 |

That there is every indication that the gross receipts from advertising of the newspapers aforesaid for the twelve-month period ending September 30, 1935, will be substantially in excess of the gross advertising revenue of such newspapers for the twelve-month period ending September 30th, 1934.

(Sgd.) John D. Ewing.

Sworn to and subscribed before me this 30th day of October, 1934.

(Sgd.) John H. Tucker, Jr., Notary Public.

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[fol. 44] In United States District Court

[Title omitted]

Affidavit of Marshall Ballard and J. Walker Ross—Filed Nov. 23, 1934

State of Louisiana,
Parish of Orleans:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public in and for the Parish of Orleans, State of Louisiana, personally came and ap-

peared Marshall Ballard and J. Walker Ross, who, being first duly sworn, depose and say:

That affiant Ballard has been Editor-in-Chief of "The New Orleans Item" since 1907 and of "The Morning Tribune" since its inception in 1924; that affiant Ross has been on the editorial staff of "The New Orleans States" since 1885, and has been its Editor-in-Chief since 1908; that in their said capacities both affiants have followed closely and have been intimately familiar with the contemporaneous economic and political history of the State of Louisiana, including particularly recent events and trends.

That for some time prior to the convening of the regular session of the Legislature of Louisiana for the year 1934 on May 14, 1934, and throughout said session, all the newspapers published by the plaintiffs in this suit except "The Lake Charles American-Press" had been actively opposing, in their editorial policies, the dominant political faction in the State, being a branch of the national Democratic party within the State often referred to as the "Long Faction"; that said "American-Press," while never an open proponent of said faction, did not take an active editorial stand in opposition thereto until shortly after the convening of said regular session, since which time it has maintained an opposition policy.

[fol. 45] That said dominant State political faction has been headed, for some years, by Huey P. Long, ex-Governor of the State and present United States Senator from the State; that all of the executive departments of the State have been, since the year 1930, and are at present, controlled by said dominant faction; that the present Governor of the State, Oscar K. Allen, is a member, and one of the leaders, of said faction; that a majority of the members of the Legislature of 1934 were members of said faction during said session.

That said newspapers have, from time to time, in their editorials, criticized the political practices and policies of said dominant political faction severely, and for some time prior to, and during, the regular session of the State Legislature of 1934, there has been open and vigorous editorial opposition by said newspapers to the policies and practices of said political faction; that the leaders and various members of said faction, during said time, openly and vehe-

nently denounced said newspapers in political addresses, in speeches on the floor of the Legislature, and in circulars widely distributed through the employees of various State departments under their control, and threatened the newspapers with taxation on their advertising; that, during said regular session of the Legislature of 1934, after the introduction, and prior to the passage of, a bill to tax newspapers on their advertising (House Bill No. 345), a circular was issued over the names of Governor Oscar K. Allen and Senator Huey P. Long, containing the following:

"The lying newspapers are continuing a vicious campaign against giving the people a free right to vote. We managed to take care of that element here last week. A tax of 2% on what newspapers take in was placed upon them. That will help their lying some. Up to this time they have never paid any license to do business like everybody else does. It is a system that these big Louisiana [fol. 46] newspapers tell a lie every time they make a dollar. This tax should be called a tax on lying, 2¢ per lie."

That copies of said circular were widely distributed throughout the State, and a copy thereof was laid on the desk of each member of the Legislature during its regular session of 1934 while said bill was under consideration; that a copy of said circular is annexed to this affidavit.

That, on or about September 24, 1934, in a public address delivered in Sulphur, Calcasieu Parish, Louisiana, Senator Long, speaking for the dominant political faction of the State, of which he is head as hereinabove set forth, said:

"There was only one newspaper in the State that had not joined up with the gang opposing me, and that was the Lake Charles American Press. Well, we tried to find a way to exempt the Lake Charles American-Press from the advertising tax, but did not think we could do it, but we would have done it if we could."

That affiants make this affidavit for use in the above numbered and entitled suit.

(Sgd.) Marshall Ballard. (Sgd.) J. Walker Ross.

Sworn to and subscribed before me this 10th day of October, 1934.

(Sgd.) Eberhard P. Deutsch, Notary Public. (Seal.)

[fol. 47] EXHIBIT TO AFFIDAVIT

Circular Attached to Affidavit of Marshall Ballard and J. Walker Ross

"A man's a man for all that."

—Robert Burns.

Bill to Give Every Person Free Right to Vote Faces Final Show-down in Legislature—New Orleans Ringsters and Election Thugs Combine with Lying Newspapers and Big Money Interests to Keep Down the Size of the Common People Vote for Fear It Will Interfere with Their Rackets and Thievery

To the People of Louisiana:

The bill to relieve the people from having to pay poll taxes for the right to vote has been passed by the Senate. It must now be passed by the House of Representatives. The ringsters have ganged their forces to defeat it in the House. It takes a two-thirds majority to pass this bill in the House (we had the two-thirds in the Senate), because ths bill is a Constitutional Amendment and, if passed, must be voted upon by the people in November.

All that we are asking the parish representatives in the House to do is to let the people say if they do or do not want to repeal this old poll tax law of the dark ages that charges $1.00 each year against every man and woman who desires to vote in our elections.

The poll tax law exists in but a very few States. It was originally passed to keep the poor people (then called the rabble and riff-raff) from voting.

In the beginning of this country, no one could vote unless [fol. 48] he owned a large amount of property or had a certain amount of slaves or money. The common people finally forced most States to allow them to vote whether they had anything or not. There was considerable bloodshed in most cases to get that right for the common people to vote along with the well-to-do people. Those in control in Louisiana thought that the majority of the common people either would not care enough about voting to pay the dollar per year to do it, or else they would not have the dollar for the purpose. Therefore, they passed the poll tax law, hoping to control the election machinery in such

a way as not to be overwhelmed by the full will of the whole run of people.

Last week, in conversation with a member of the State Senate who had voted against repealing the poll tax bill, I said to him:

"Many of your people did not have the dollar last year or the year before to pay their poll taxes. Why would you make it inconvenient or a hardship on the man or woman who wants to exercise their right to vote? Don't you believe in a Democratic Government and in all the people having their equal say?"

To my surprise the answer came back like this:

"There are too many of the low-type people voting now. The poll tax ought to be raised so as to keep so many of them from voting in these elections. Most of them are not fit to participate in government."

I do not propose to give the name of the Senator making that remark. He is my personal friend, but that is the view of many men in public and private life today. They actually feel and in their hearts believe that the government is made to be run by a select few. Many of them feel that the common run of mankind is just a little bit better than the common run of cattle. You can find plenty of people who would sit up all night to nurse a high-class poodle dog and maybe keep the whole neighborhood awake for fear that "Fi-fi might sneeze again," but would not return on their heels to raise money for worthy human purposes.

[fol. 49] But this country has gotten away from that idea. It is a democracy. "A man's a man for all that."

Now the poll tax law is being fought mighty hard in the House of Representatives. It's another fight against human principle. There are many Sheriffs who urge that this poll tax law ought to be repealed. They say it is a burden upon them and upon their people, and that it does not do any good except to keep the masses from exercising a free and independent right to vote for whom they please. But there is another class of Sheriffs who have dug up money and paid the poll taxes of their friends and henchmen, and who know that the outside public who have not been on the payroll have had no such chance to protect themselves. That

class of Sheriffs feel that they have an advantage that they want to keep. There is a third class of Sheriffs and the Old New Orleans Ring who steal and pilfer poll taxes by the hundreds of thousands. There is no way to check up on them. Instead of having one poll tax book they print ten. They can let a man vote ten times in one day and keep an honest man from voting one time. That class of Sheriffs and the Old New Orleans Ring and gangsters do not want the poll tax law repealed for they have an advantage over the well-to-do people as well as the common run of people that they do not want to surrender.

It has been said by some that if everyone can vote in Louisiana without having to pay for it that it would "add 150,000 more votes to Huey Long's side." Those who are opposed to me in politics are being urged to vote against repealing the poll tax law on that account. That is a very poor excuse. If a man feels that a majority of the people of this country do not want him for an office he should not be permitted to force himself upon the people because he [fol. 50] has been able to manipulate poll tax fees. The government that truly represents the will of the people, that is run according to the wishes of the people, will last forever; but one that is used to stifle the people's wishes is sooner or later doomed to perdition.

Now, this poll tax bill must be acted upon in the House of Representatives on Tuesday or Wednesday of this week at the latest. Your representatives and your sheriffs should speak out on this matter. They will be in Baton Rouge at the Legislature by the time you receive this circular, but the people should find some way to get them word of their desire to vote on whether or not this poll tax law should be repealed. Make known your wishes to them quickly.

Again we warn against this clap-trap that to repeal the poll tax law will deprive the schools of money. It will do no such thing. All the poll taxes collected in this State amount to around $300,000.00 per year. That is not a drop in the bucket of the school money that the State raises for the schools every year, not enough to even mention. We raised many times that amount this year already. Schools are not going to exist unless the common people can continue to have a voice in the government. The right of the

common people to vote was what brought the public schools. Extend that right and you will extend the schools.

The lying newspapers are continuing a vicious campaign against giving the people a free right to vote. We managed to take care of that element here last week. A tax of 2% on what newspapers take in was placed upon them. That will help their lying some. Up to this time they have never paid any license to do business like everybody else does. It is a system that these big Louisiana newspapers tell a lie every time they make a dollar. This tax should [fol. 51] be called a tax on lying, 2¢ per lie. We also placed a small tax on the cotton exchange that will yield $500,000.00 per year to the people. The public utilities have been taxed 2% of their revenues, by another law we passed. It has been a vicious and hard fight. We will go a long way this session, much further than we thought we might be able to go. There will be a great deal more ground to cover to get all that is required for our people.

Our State Constitution has prohibited an income tax up to now. This week we mustered the two-thirds in the House to submit a Constitutional Amendment. It will pass the Senate. It merely taxes the man making big money a small per cent so as to relieve the poor man who makes very little. Our financial interests imbedded so many things in our State Constitution that all power is necessary to upset them. Louisiana was the world's worst controlled corporation State.

It is a known fact that the New Orleans Police is in the hands of the lowest-down thieves, thugs and racketeers on this continent. The dives and dens that rule that city are a shame on earth. Every person who does not contribute to their graft and politics or who fails them in any way may be hounded out of business or his home. They arrest people, throw them in cess-pool jails all night, refusing them bond, and often time keep them there for Saturday and Sunday, saying no bond can be fixed for one's release, while their drunken judges and recorders stay out of town on the Gulf Coast for the week end. They put bank robbers and gangsters in the cells with poor men and their wives to scare them to death and sometimes to beat them unmercifully. We have passed a law placing the police under a board composed of one each selected by Tulane

University, Loyola University, Central Trades and Labor [fol. 52] Council, New Orleans Athletic Association, Young Men's Business Club, Property Owners' Association, and Association of Commerce. This is to keep from having to take steps in that city to save the people there from the thugs and outlaws who are in charge. If the low-down drunkards and thugs on or off the ring benches try to carry their stealing and thuggery any further the law will out hereafter.

We are out 100% to relieve the burdens of the poor and for a redistribution of wealth. We were laughed at when the fight was started. Just take note what is happening and what will happen during the next few years and it is our bet that it will all be done. There will be no starvation in the land of plenty when our program succeeds. We propose to fight until it does succeed.

But we need the people to help us fight for their own rights and their own interest. Whoever tries to saddle them down with something that takes away from them their right to vote is standing in their way of a Democratic Government.

Get busy today. Work quickly. See to it that your sheriff is not opposing you in your right to vote without having to pay for it. But, above all, get word to your representative in Baton Rouge that you desire the right to vote on this matter as to whether you should or should not be made to pay $1.00 each year for the right to vote. There is not a moment to lose. Help us make your fight.

Yours sincerely, Huey P. Long, U. S. Senator. O. K. Allen, Governor.

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[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF ARTHUR G. NEWMYER and JOHN F. TIMS, JR.—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, a duly commissioned and qualified Notary Public in and for the Parish of Orleans, State of Louisiana, personally came and ap-

peared: Arthur G. Newmyer and John F. Tims, Jr., who, being first duly sworn, depose and say:

I

That affiant Newmyer is General Manager of "Item Company, Ltd.," and that affiant Tims is Business Manager of "The Times Picayune Publishing Company"; that both affiants, in their respective capacities aforesaid, for many years have had, and now have, general supervision over advertising printed in the newspapers published by their respective companies; that for many years both affiants have been specialists in the business of newspaper advertising, and are generally conversant with said business, not only in the State of Louisiana but throughout the United States; that affiants are, and have been for many years, also conversant with other phases of the newspaper business both within and without the State of Louisiana; and that affiants are also conversant with other advertising media and have made studies thereof, insofar as these other ad- [fol. 54] vertising media compete with, and directly affect, newspaper advertising.

II

Affiants further state that there are no newspapers, magazines, periodicals, or other publications published within the State of Louisiana and having a circulation of more than 20,000 copies per week, except the following: "The Lake Charles American-Press", "The Baton Rouge State-Times", "The New Orleans Item", "The Morning Tribune", "The Item Tribune", "The Shreveport Journal", "The Daily Advertiser" of Lafayette, "Alexandria Daily Town Talk", "The Monroe Morning World", "The Times Picayune", "The New Orleans States", and "The Shreveport Times". There are, however, published within the State of Louisiana, certain other daily newspapers having a circulation of but slightly less than 20,000 copies per week, to-wit: "The Ruston Leader", published in the City of Ruston, Louisiana; "The Hammond Courier", published in the City of Hammond, Louisiana; "The Crowley Signal", published in the City of Crowley, Louisiana, and the "Morning Advocate", published in the City of Baton

Rouge, Louisiana. All of the newspapers last named compete with all of the newspapers first named, both as to circulation and advertising, except that the "Morning Advocate" does not compete with the Baton Rouge "State-Times", as both of said newspapers are owned by the same corporation.

III

Affiants further state that there are approximately 120 weekly newspapers published in the State of Louisiana and circulated throughout the State, but none of them has a cir- [fol. 55] culation of as much as 20,000 copies per week. Said weekly newspapers also compete with all of the newspapers heretofore mentioned, both as to circulation and advertising. There are approximately 163 publications published in the State of Louisiana selling and publishing advertising, and the 13 newspapers first above named are the only publications published within the State of Louisiana having a circulation of more than 20,000 copies per week.

IV

Affiants further state that throughout the United States, and in the State of Louisiana, there are six principal media of advertising, to-wit: (1) Newspaper advertising; (2) magazine advertising; (3) radio broadcast advertising; (4) outdoor advertising (principally billboards); (5) street car card advertising; and (6) motion picture advertising.

V

There is a corporation known as "Media Records, Inc.", with its principal office in the City of New York, which maintains a national service, and is the accepted authority on advertising measurements, and which regularly compiles and disseminates standardized statistics as to the volume of advertising in various media and publishes pamphlets, charts, books and special reports giving the data thus assembled, which data are universally accepted by advertisers, advertising agents, newspapers, other publications and media as authentic and authoritative. The statistics given by said "Media Records, Inc." as to the amount spent during the year 1933 throughout the United States for the various media of advertising are approximately as follows:

| | |
|---|---|
| (1) Newspaper advertising | $453,000,000.00 |
| (2) Magazine advertising | 137,000,000.00 |
| (3) Radio broadcast advertising | 57,000,000.00 |
| (4) Outdoor advertising | 40,000,000.00 |
| (5) Street car card advertising | 11,000,000.00 |

[fol. 56] Said "Media Records, Inc.", did not give any data as to the amount spent during that year for motion picture advertising, but affiants have sufficient knowledge to express the belief that the annual amount spent for motion picture advertising throughout the United States in the year 1933 was less than $10,000,000.00. Said "Media Records, Inc.", is likewise authority for the statement that in the State of Louisiana the revenue derived by the various media of advertising is in the above ratio.

VI

Affiants further state that the revenues of the newspapers firstly named in this affidavit and all newspapers in general, and also of other publications, are derived almost entirely from monies paid by regular subscribers to, or purchasers of, said publications, and from monies paid for the insertion of advertisements in said publications; and that the revenue derived from circulation is a substantial part of the total revenue and varies materially in its ratio to advertising revenue with respect to particular publications. For instance, in the following examples of groups of newspapers the circulation figures in each group are, for comparative purposes, the same, while the percentages of advertising and circulation revenues to the total revenues vary materially in each case:

| | | Percentage of Revenue | |
|---|---|---|---|
| Newspaper | Circulation | Advertising | Circulation |
| "Alexandria Daily Town Talk" | 8,263 | 66 2/3% | 33 1/3% |
| "Monroe News-Star" | 9,219 | 75% | 25% |
| "Memphis Commercial Appeal" | 113,478 | 60% | 40% |
| "Washington Star" | 112,324 | 82% | 18% |
| "Denver Post" | 137,744 | 58% | 42% |
| "Indianapolis News" | 129,256 | 77% | 23% |

VII

[fol. 57] Affiants further state that while volume of circulation is a factor in fixing advertising rates, it is only one of several factors; and that character of circulation, competitive conditions in the particular territory served by the

newspaper, economic conditions prevailing in the territory, and other factors are of great importance; that thus it frequently results that a daily newspaper with a much small volume of circulation than another has advertising rates as high as, and in some instances, considerably higher than, those of the other newspaper having greater circulation, and accordingly obtains an annual income from advertising published in its columns larger than that obtained by the other newspaper of greater circulation.

Thus, the following examples of two newspapers in each of several fields are given with their respective circulations, advertising rates, and advertising lineage carried during the year 1933:

| | Circulation | Rate | Lineage |
|---|---|---|---|
| New York City | | | |
| "Herald Tribune" | 317,697 | 72¢ | 6,616,209 |
| "American" | 337,238 | 65¢ | 6,426,347 |
| Washington, D. C. | | | |
| "News" | 67,083 | 18¢ | 3,908,102 |
| "Herald" | 94,250 | 15¢ | 3,502,775 |
| Miami, Florida | | | |
| "News" | 22,200 | 11¢ | 405,000 |
| "Herald" | 37,650 | 11¢ | 557,714 |
| Dallas, Texas | | | |
| "Journal" | 40,552 | 12¢ | 4,771,227 |
| "Dispatch" | 40,674 | 10¢ | 2,845,605 |
| Baltimore, Md: | | | |
| "Sunday Sun" | 177,283 | 50¢ | 4,078,142 |
| "Sunday American" | 198,645 | 35¢ | 2,979,280 |
| [fol. 58] | | | |
| Boston, Mass. | | | |
| "Transcript" | 33,605 | 25¢ | 3,697,022 |
| "Post" | 346,607 | 60¢ | 5,485,109 |
| Detroit, Michigan | | | |
| "Sunday News" | 268,972 | 55¢ | 3,037,032 |
| "Sunday Times" | 285,166 | 50¢ | 2,635,545 |

## VIII

Affiants further state that the gross annual revenue to the State of Louisiana from the tax sought to be imposed by Act 23 of 1934, if enforceable, would be less than $80,000 on the basis of 1933 figures, inasmuch as the total gross annual advertising revenue of the 13 newspapers sought to be taxed by said act, plus the estimated revenue derived in the State of Louisiana for motion picture advertising was less than $4,000,000 for 1933.

IX

That affiants make this affidavit for use in the above entitled and numbered suit.

(Sgd.) A. G. Newmyer. (Sgd.) John F. Tims, Jr.

Sworn to and subscribed before me this 31 day of October, 1934.

(Sgd.) Eberhard P. Deutsch, Notary Public.

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[fol. 59] In United States District Court

[Title omitted]

Affidavit of Howard Davis—Filed Nov. 23, 1934

State of New York,
County of New York, ss:

Howard Davis, being duly sworn, deposes and says:

I reside at 139 Pelhamdale Avenue, Pelham, in the County of Westchester and State of New York.

I have been engaged in the newspaper publication business for upwards of forty years, during most of that period in managerial and executive capacities.

I am and since 1931 have been the President and a director of the American Newspaper Publishers Association and before that date served it as Vice President and in other capacities.

The American Newspaper Publishers Association is a voluntary association, which has been in continuous existence since 1887 and the membership of which is composed of approximately five hundred daily newspapers published in and circulated throughout the United States.

I am and since its creation have been Chairman of the Code Authority for the Daily Newspaper Publishing Business. Pursuant to the provisions of the Code for the Daily Newspaper Publishing Business, which has been approved by the President of the United States under the National Industrial Recovery Act, approximately twelve hundred daily newspaper have assented to such Code.

I am and for the past fifteen and a half years have con-
[fol. 60] tinuously been Business Manager of the newspaper "New York Herald Tribune" (and its predecessor, the "New York Tribune"). During most of that period I have continuously been and still am a Vice President of New

York Tribune, Inc., a New York corporation, which is the owner and publisher of the "New York Herald Tribune" and was the owner and publisher of its predecessor, the "New York Tribune."

The "New York Herald Tribune" is a daily and Sunday newspaper published in the City of New York and having a circulation of over 300,000 copies daily and more than 400,000 on Sunday.

I am thoroughly familiar with the business of newspaper publication as carried on in the United States, with the interests and problems of daily newspapers in the United States and with the nature of their revenues and expenses.

The business of newspaper publishers is the gathering and dissemination of information in the form of news, editorial comment and advertising. Such newspapers are dependent in large measure for the conduct of their business on the revenue from the advertising published therein.

For many years it has been, and now is, the substantially, if not entirely universal, custom of the newspapers in the United States to sell their publications to subscribers and readers at far less than the cost of production, with the result that circulation revenue meets only a fraction of the cost which newspapers incur and must incur to perform the functions of the press.

In order to sell newspapers in that manner and so as to give the widest dissemination to the information which they [fols. 61 & 62] offer, it is necessary to depend on advertising revenues to meet the major cost of production. Any factor which affects advertising revenue correspondingly and directly affects the ability of newspapers to serve their readers and to perform their duties and functions to the public.

This affidavit is made for use in the above entitled suit.

(Sgd.) Howard Davis.

Subscribed and sworn to before me this 16th day of November, 1934.

(Sgd.) Wm. A. Modery, Notary Public, Queens County, No. 1988, Reg. No. 1459. Certificate filed in Nassau County, No. 6-M-15. Certificate filed in N. Y. Co., No. 274, Reg. No. 6-M-151. Kings County No. 123, Reg. No. 6152. Commission expires March 30, 1935. (Seal.)

[Authentication omitted.]

[fol. 63] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF CARL W. ACKERMAN—Filed Nov. 23, 1934

STATE OF NEW YORK,
County of New York, ss:

Carl W. Ackerman, being duly sworn, deposes and says:

I reside at 460 Riverside Drive, New York City, and am, and since July 1, 1931, have been, Dean of the Faculty of Journalism of Columbia University.

I am a graduate of Earlham College, Richmond, Indiana, A. B., A. M., and from the School of Journalism, Columbia University, New York City, with the degree of B. Litt.

After my graduation from Columbia University in June, 1913, I joined the staff of the United Press Association, an international news gathering association serving many hundreds of papers in the United States and abroad, becoming, respectively, Albany correspondent and reporter at the United States Senate and House of Representatives and the White House for that organization. In December, 1914, I was sent abroad as correspondent for the United Press, serving two years and two months as Manager of the Berlin Bureau, and returning to the United States when diplomatic relations were broken. From 1917 to 1921 I was special correspondent for the New York Tribune, the Saturday Evening Post, the New York Times and the Philadelphia Public Ledger in Mexico, the Orient and practically all countries in Europe west of Russia.

From 1922 until I became Dean of the Columbia School of Journalism, I was associated with a number of industrial corporations in the United States in an advisory capacity.

I am thoroughly familiar with the business of newspaper [fol. 64] publication as carried on in the United States, with the interests and problems of daily newspapers in the United States and with the nature of their revenues and expenses. During the course of my work, both before and after becoming Dean of the Columbia School of Journalism, I have had occasion to study freedom of the press in its governmental and social, as well as economic and legal aspects, both in this country and in Europe.

The business of newspaper publishers is the gathering and dissemination of information in the form of news, editorial comment and advertising. Newspapers are dependent in large measure for the conduct of their business on the revenue from the advertising published therein.

For many years, indeed from the time of their origin, it has been and now is the substantial, if not entirely universal custom of newspapers in the United States to sell their publications to subscribers and readers at far less than cost of production, with the result that circulation revenue meets only a fraction of the cost which newspapers incur, and must incur, in order to perform the functions of the press.

In order to sell newspapers in that manner and so as to give the widest dissemination to the information which they offer, it is necessary to depend on advertising revenue to meet the major cost of production. Any factor which affects advertising revenue correspondingly and directly affects the ability of newspapers to serve their readers and to perform their duties and functions to the public. Restriction by taxation of advertising is in practical effect as direct an economic burden upon press freedom as would be a tax measured by the number of news items or the space devoted to editorial comment.

[fol. 65] Since the year 1702, when the first daily newspaper was established in England, and 1704, when the first continuously published daily newspaper in the United States was started, advertising and news have been considered indispensible parts of a newspaper. Thus for more than two and a third centuries advertising and news have been universally considered in all democratic countries to be absolutely interdependent. The expansion of our news service and the growth of newspapers, not only in size, but in number and breadth of news coverage in the United States, have been dependent upon and grown hand in hand with increasing advertising revenues. As advertising has increased it has made it possible for the press to provide public information, indispensible in a democracy, not only day by day, but hour by hour, for the information and guidance of citizens everywhere.

If advertising revenue of the daily newspapers is in any way hampered or curtailed or endangered, it automatically

affects the ability of the newspaper to distribute public information.

This affidavit is made for use in the above entitled case.

(Sgd.) Carl W. Ackerman.

Sworn to before me this 20th day of November, 1934.

(Sgd.) J. Edgar Swanin, Notary Public, Kings County, Clerk's No. 60, Register's No. 6076. Certificates filed in New York County, Clerk's No. 216, Register's No. 6-S-151. Certificates filed in Westchester Co. Commission expires March 30, 1936. (Seal.)

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[fol. 66] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS, TO STRIKE, AND ANSWER—Filed Nov. 23, 1934

Now into this Honorable Court comes the defendant, Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, through Gaston L. Porterie, Attorney General of Louisiana, and Charles J. Rivet, Special Assistant to said Attorney General and Special Counsel for the said defendant, and for return and defense to the order rendered herein to show cause why the preliminary injunction prayed for should not issue, first moves to dismiss these proceedings and for grounds of such dismissal urges:

I

(a) The bill of complaint fails to affirmatively show that the disputed tax, constituting the amount in controversy herein, exceeds the sum of three thousand dollars as to each or any of the plaintiffs.

(b) The disputed tax, constituting the amount in controversy herein, is in fact less than three thousand dollars as to each or any of the plaintiffs.

II

The facts set forth in the bill of complaint are insufficient to constitute a valid cause of action in equity.

Wherefore, the restraining order issued herein should be recalled and vacated, the interlocutory injunction prayed for denied, and the bill dismissed at plaintiffs' costs.

[fol. 67]

III

In the alternative respondent moves that paragraphs VIII and XI of the bill of complaint be ordered stricken therefrom for the following reasons:

(a) Paragraph VIII is purely argumentative and contains no statement of ultimate facts. The matter contained in said paragraph is impertinent, and if not such is too general and uncertain to apprize respondent of what pertinent fact is meant to be averred.

(b) The matters contained in paragraph XI consist of conclusions which are impertinent, scandalous and libelous, and concern persons not connected with this suit. That even if considered as otherwise, said paragraph presents no justiciable matter.

IV

In the further alternative, defendant moves that the plaintiffs be required to make a further and better statement of the nature of their complaint, and be required to make more definite and certain the following matters stated in their bill of complaint:

(a) In paragraph IV plaintiffs state that there are published within the State certain other daily newspapers having a circulation but slightly less than 20,000 copies per week, and that these newspapers compete with the newspapers published by petitioners, both as to circulation and advertising. Plaintiffs should be required to state the names of said newspapers, their weekly circulation, or an approximation thereof, and the character of the competition, and the acts constituting the same.

[fol. 68] (b) In paragraph V plaintiffs state that there are in the State weekly newspapers, with circulation of less than 20,000 copies per week, competing with them. The plaintiffs should be required to identify the said newspapers, to give their circulation, or an approximation thereof, and the character of competition, and the acts constituting the same.

(c) The whole of paragraph VIII of plaintiffs' bill of complaint appears to be solely argumentative. If any pertinent ultimate facts are intended to be stated in said paragraph, plaintiffs should be required to make the same certain and definite.

(d) In paragraph XXI plaintiffs state that the tax complained of as to each of them, except three, would amount to more than three thousand dollars per annum, exclusive of interest, costs, fines and penalties; and that as to said three, said tax, with fines and penalties, would exceed three thousand dollars. Complainants should be required to state definitely, and with certainty, the computation upon which they predicate their conclusion.

V

And now, with full reservation of all rights under the foregoing motions, and without in any way abandoning or waiving the same, for further return to the order to show cause why an interlocutory injunction should not issue herein, defendant denies all of the facts and conclusions contained in plaintiffs' bill of complaint, except those as to her quality and domicile, and as to her purpose to perform the duties imposed upon her by the statutes of the State of Louisiana. More specifically:

[fol. 69] (a) Defendant admits paragraphs II and XIX of the bill of complaint.

(b) Defendant denies paragraphs IV, XI, XIII, XVII, XX and XXI of the bill of complaint.

(c) Defendant is without knowledge of the facts in paragraphs III, V, VI, VII, VIII and XII of the bill of complaint, and, therefore, denies the same.

(d) Defendant admits the facts in paragraph IX of the bill of complaint, except that she is without knowledge as to whether a copy of Act No. 23 of the Legislature of Louisiana of 1934 has been annexed to the bill of complaint, and does not know whether such copy, if so annexed, is a true and correct copy, and, therefore, denies said averment.

(e) Paragraphs X, XIV, XV and XVI of the bill of complaint consist solely of plaintiff's statements as to the con-

tents of Act 23 of the Louisiana Legislature of 1934, and of alleged quotations of sections of said statute; that the said legislative act speaks for itself and that no statement as to the contents thereof, or any alleged quotation therefrom, made by plaintiffs can change or alter the said statute. Defendant nevertheless denies that paragraph X contains a correct quotation from Section 1 of the said statute.

Defendant reiterates her denial that the matter herein in controversy exceeds the sum or value of three thousand dollars; and avers that the disputed tax, the collection of which is sought to be enjoined, as to each of the plaintiffs, is less than the sum of three thousand dollars.

Respondent denies that the plaintiffs, or either of them, are or ever were in danger of suffering any irreparable or [fol. 70] other loss or injury due to any action which she might take under the provisions of Act 23 of the Louisiana Legislature of 1934; and denies that said statute violates any provision of the Federal Constitution or of the Constitution of the State of Louisiana. She avers, on the contrary, that the statute is a legitimate and valid exercise of the taxing power of the State of Louisiana; that the classification adopted by its Legislature is a rational one, consonant with classifications made in the newspaper and advertising business; that newspapers in Louisiana having a circulation of 20,000 copies, or less, constitute a class of country journals, with little equipment, few employees and small assets, which use methods of operation entirely different to the metropolitan newspapers operating in the State and having a circulation of more than 20,000 copies per week. Respondent denies that said two classes are in competition in the business of selling advertising, and avers, on the contrary, that said class of small journals are not recognized as advertising media by the large advertisers and the advertising agencies of this country.

Defendant further shows that by the restraining order granted herein she, as an officer of the State of Louisiana, and said State of Louisiana have been deprived of the rights granted by the Act of Congress of March 4, 1913, amending Section 266 of the Judicial Code, which provides:

"That if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to en-

force such statute or order, accompanied by a stay in such State court of proceedings under such statute or order [fol. 71] pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State."

Respondent further shows that this cause presents a controversy in personam, and that no injunction should issue herein to preclude respondent from bringing any action in personam against the plaintiffs in any court of the State of Louisiana, or in any court of concurrent jurisdiction.

Respondent also shows that no injunction should issue herein which would deprive her, or the State of Louisiana, of any rights under Section 266 of the Judicial Code, as amended.

Wherefore, respondent prays that the restraining order issued herein be recalled and vacated; that the interlocutory injunction prayed for be denied, and that plaintiff's bill of complaint be dismissed at their costs.

(Sgd.) Gaston L. Porterie, Att'y-Gen'l of Louisiana;
(Sgd.) Chas. J. Rivet, Specl. Asst. to Att'y-Gen'l of La. and Specl. Counsel for Respondent, Attys. for Respondent.

*Duly sworn to by Gaston L. Porterie. Jurat omitted in printing.*

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[fol. 72] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF J. H. WADE—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Before me, the undersigned authority, personally came and appeared J. H. Wade, who, after being duly sworn deposes and says:

That he is a resident and a citizen of the State of Louisiana, his domicile being in the Town of Port Allen, Parish of West Baton Rouge, in said State; that he is forty years

of age, married and a man of family, and is engaged in country newspaper work, being the owner and publisher of the Port Allen Observer, a weekly newspaper issued out and from the Town of Port Allen, above Parish and State.

That since his boyhood age of twelve, with the exception of time served in the Army during the World War, he has done work in and about the newspaper office, six years of which period was devoted to mechanical work in city newspapers.

That the country press, in his opinion, has suffered its loss of national (foreign) advertising to the daily newspapers through several contributing factors:

1. Good roads and automobiles facilitate a faster distribution of the daily newspaper, bringing to practically every rural home the world dispatches of the great news associations, such as the Associated Press and other wire services.

2. The daily press, because of its frequency of publication, easily obtains the services of the large advertising agencies, who usually receive a commission of 15% of all advertising placed. These agencies, in most part, such as N. W. Ayer & Son, Lord, Thomas & Logan, etc., represent at the same time the large national advertisers, the tobacco companies, the automobile concerns and, lately, the great breweries and distilleries who are spending millions [fol. 73] for advertising.

3. The radio with its nation-wide hook-up systems is taking a large amount of advertising from the country press.

Very few country newspapers could have survived in the past few years if it had not been for the legal printing, such as from the police jury, the school board and sheriff sales, etc., in many instances that work being done at a price less than one-half the price fixed by statute.

My approximate capital investment (replacement value) is Fifteen Thousand ($15,000.00) Dollars. An approximate statement of my yearly revenues and expenditures is as follows:

Revenues

| | | |
|---|---|---|
| Subscriptions | $400.00 | |
| Job printing | 1,000.00 | |
| Commercial advertising | 300.00 | |
| Legal advertising | 2,080.00 | |
| Total | | $3,780.00 |

Expenditures

| | | |
|---|---|---|
| Labor | $936.00 | |
| Stock | 600.00 | |
| Rent | 300.00 | |
| Power, etc | 600.00 | |
| Total | | $2,436.00 |
| Profit | | $1,244.00 |

I am of the opinion that the day is fast approaching when the country press will be gone, especially in those parishes where there are no large towns. Some publishers argue that the job printing departments will hold them up, but I think that the mail order printer concerns of the large cities will eventually take the greater portion of their work because of their ability to do it cheaper.

(Sgd.) J. H. Wade.

Sworn to and subscribed before me this, the 22nd day of November, A. D. 1934 (Sgd.) H. Carey Comish, Notary Public. (Seal.)

[fol. 74] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF J. H. WADE—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Before me, the undersigned authority, personally came and appeared J. H. Wade, who, after being duly sworn, deposes and says:

That he is a resident and a citizen of the State of Louisiana, his domicile being in the Town of Port Allen, Parish of West Baton Rouge, in said State; that he is forty years of age, married and a man of family, and is engaged in

country newspaper work, being the owner and publisher of the Port Allen Observer, a weekly newspaper issued out and from the Town of Port Allen, above Parish and State.

That since his boyhood age of twelve, with the exception of time served in the Army during the World War, he has done work in and about the newspaper office, six years of which period was devoted to mechanical work in city newspapers.

That he is familiar with Ayer's Directory of Newspapers and Periodicals, an annual compilation, and the recognized key to the publishing industry.

That he has made an examination of the said sixty-sixth compilation, being the one for the year 1934, and that the extract hereinbelow is a truly and correct one from said 1934 volume, showing the weekly circulation of the weekly newspapers and the daily circulation of the daily newspapers of the State of Louisiana opposite the name of each newspaper and its place of publication:

[fol. 75]

List of Louisiana Newspapers Appearing in the N. W. Ayer & Son's Directory of Newspapers and Periodicals for 1934, with Notations as to Being Daily or Weekly, etc., and Volume of Such Circulation:

| Place | Name | Kind | Circulation |
|---|---|---|---|
| Abbeville | Progress | Weekly | 800 |
| Abbeville | Meridional | Weekly | 1,000 |
| Alexandria | Town Talk | Daily ex. Sun | 8,283 |
| | | Weekly | 603 |
| Amite | Progress | Weekly | 3,690 |
| Arabi | St. Bernard Voice | Weekly | 615 |
| Arcadia | Bienville Democrat | Weekly | ..... |
| Bastrop | Morehouse Enterprise | Weekly | 941 |
| Baton Rouge | Advocate | Daily ex. Mon | 2,525 |
| | | Sunday | 4,396 |
| Baton Rouge | Journal of the Louisiana Teachers' Association | Monthly | ..... |
| Baton Rouge | Louisiana Farm Bureau News | Semi-monthly | ..... |
| Baton Rouge | Reveille | Weekly | 1,701 |
| Baton Rouge | Rice Journal | Monthly | 7,060 |
| Baton Rouge | State Times | Daily ex. Sun | 9,429 |
| Benton | Bossier Banner | Weekly | 775 |
| Bernice | Journal | Weekly | ..... |
| Bogalusa | Enterprise and American | Weekly | 6,750 |
| Bogalusa | News | Weekly | 3,310 |
| Bossier City | Planters Press | Weekly | 1,050 |
| Bunkie | Record | Weekly | 1,972 |
| Clinton | Watchman | Weekly | ..... |
| Colfax | Chronicle | Weekly | 1,450 |
| Columbia | Caldwell Watchman | Weekly | 750 |
| Convent | Interim | Weekly | 335 |
| Coushatta | Citizen | Weekly | 625 |
| Covington | St. Tammany Farmer | Weekly | 2,690 |
| Crowley | Acadian-Signal | Weekly | 950 |
| Crowley | Signal | Daily ex. Sun | 2,294 |

List of Louisiana Newspapers Appearing in the N. W. Ayer & Son's Directory of Newspapers and Periodicals for 1934, with Notations as to Being Daily or Weekly, etc., and Volume fo Such Circulation—Continued

| Place | Name | Kind | Circulation |
|---|---|---|---|
| Denham Springs | News | Weekly | 1,550 |
| DeQuincy | News | Weekly | ..... |
| [fol. 75½] | | | |
| DeRidder | Enterprise | Weekly | 1,548 |
| Donaldsonville | Chief | Weekly | 1,200 |
| Eunice | New Era | Weekly | 2,670 |
| Farmerville | Gazette | Weekly | 1,100 |
| Ferriday | Concordia | Weekly | ..... |
| Franklin | Banner-Tribune | Weekly | 900 |
| Franklinton | Era-Leader | Weekly | ..... |
| Glenmora | Patriot | Weekly | 724 |
| Gonzales | Gonzales Weekly | Weekly | ..... |
| Greensburg | St. Helena Echo | Weekly | 630 |
| Gretna | Jefferson Democrat | Weekly | ..... |
| Gretna | Jefferson News | Weekly | 4,570 |
| Gueydan | News | Weekly | 225 |
| Hahnville | St. Charles Herald | Weekly | ..... |
| Hammond | Courier | Daily ex. Sun | 2,241 |
| Hammond | Vindicator | Weekly | 2,250 |
| Harrisonburg | Catahoula News | Weekly | 2,400 |
| Haynesville | News | Weekly | 2,250 |
| Homer | Guardian-Journal | Weekly | 2,329 |
| Houma | Courier | Weekly | ..... |
| Houma | Times | Weekly | 800 |
| Jeanerette | Progress | Weekly | 615 |
| Jena | Times | Weekly | 1,705 |
| Jennings | Jeff Davis Parish News | Semi-Weekly | 1,809 |
| Jonesboro | Jackson Independent | Weekly | ..... |
| Jonesville | Booster | Weekly | ..... |
| Kaplan | Times | Weekly | 215 |
| Kentwood | Commercial | Weekly | 2,175 |
| Kinder | Tribune | Weekly | ..... |
| Lafayette | Advertiser | Daily ex. Sun | 4,170 |
| Lafayette | Benevolent News | Monthly | 15,000 |
| Lafayette | Vermilion | Weekly | 1,000 |
| Lake Arthur | News | Weekly | 238 |
| Lake Charles | American-Press | Daily ex. Sun | 5,729 |
| Lake Charles | American-Press | Weekly | 639 |
| Lake Providence | Banner-Democrat | Weekly | ..... |
| LaPlace | St. John Herald | Weekly (Combined) | 1,774 |
| Lutcher | St. James Voice | Weekly (Combined) | |
| Norco | St. Charles News | Weekly (Combined) | |
| [fol. 76] | | | |
| Leesville | Leader | Weekly | 2,500 |
| Leesville | Industrial Democrat | Weekly | 1,373 |
| Logansport | Interstate Progress | Weekly | ..... |
| Lucy | Meschacebe | Weekly | 375 |
| Mansfield | Enterprise | Weekly | 1,200 |
| Many | Sabine Index | Weekly | 2,250 |
| Marksville | News | Weekly | 900 |
| Minden | Herald | Weekly | 3,160 |
| Minden | Signal-Tribune | Weekly | 3,025 |
| Monroe | News-Star | Daily ex. Sat | 9,219 |
| Monroe | World | Daily ex. Sun | 7,948 |
| Monroe | World-News-Star | Weekly | 13,776 |
| Morgan City | Review | Semi-weekly | 1,280 |
| Napoleonville | Assumption Pioneer | Weekly | ..... |
| Natchitoches | Current Sauce | Fortnightly | ..... |
| Natchitoches | Enterprise | Weekly | 1,500 |
| Natchitoches | Times | Weekly | 2,160 |

List of Louisiana Newspapers Appearing in the N. W. Ayer & Son's Directory of Newspapers and Periodicals for 1934, with Notations as to Being Daily or Weekly, etc., and Volume fo Such Circulation—Continued

| Place | Name | Kind | Circulation |
|---|---|---|---|
| New Iberia | Enterprise | Weekly | ..... |
| New Iberia | Iberian | Weekly | 1,751 |
| Newllano | Llano Colonist | Weekly | 2,250 |
| New Orleans | Algiers Herald | Weekly | 4,370 |
| New Orleans | American Insurer | Monthly | ..... |
| New Orleans | Bulletin Daily | Daily ex. Sun | ..... |
| New Orleans | Catholic Action of the South | Monthly | 8,650 |
| New Orleans | Christian Advocate (Southwestern edition) (Negro) | Weekly | 5,505 |
| New Orleans | Cotton Trade Journal | Weekly | 2,828 |
| New Orleans | Courier | Semi-monthly | 6,800 |
| New Orleans | Dental Delegate | Monthly | 17,000 |
| New Orleans | Double-Dealer | Monthly | ..... |
| New Orleans | Federationist | Weekly | 8,415 |
| New Orleans | H. A. Monthly | Semi-monthly | ..... |
| New Orleans | Hotel and Club Record | Monthly | ..... |
| New Orleans | Item | Daily ex. Sun | 58,091 (Sat. 45,018) |
| New Orleans | Item-Tribune | Sunday | 73,445 |
| New Orleans | Jewish Ledger | Weekly | 6,400 |
| New Orleans | Journal of Commerce | Daily ex. Sun | ..... |
| New Orleans | Lawyer and Banker and Central Law Journal | Bi-monthly | 25,300 |
| New Orleans | Louisiana Grocer | Monthly | ..... |
| New Orleans | Louisiana Pythian | Monthly | ..... |
| New Orleans | Maroon | Weekly | 2,000 |
| New Orleans | Modern Druggist | Monthly | 2,000 |
| New Orleans | Newcomb Arcade | Four times | ..... |
| New Orleans | New Orleans Christian Advocate | Weekly | 6,300 |

[fol. 77]

| | | | |
|---|---|---|---|
| New Orleans | New Orleans Medical and Surgical Journal | Monthly | 2,130 |
| New Orleans | Official Court Record | Daily ex. Sun | ..... |
| New Orleans | Proceedings of the Louisiana Engineering Society | Bi-monthly | 625 |
| New Orleans | Southern Plumber | Monthly | ..... |
| New Orleans | Square and Compasses | Monthly | 6,560 |
| New Orleans | States | Daily ex. Sun | 35,048 (Sat. 25,470) |
| New Orleans | Sugar Bulletin | Semi-monthly | 1,750 |
| New Orleans | Times Picayune | Daily | 94,401 |
| New Orleans | Tribune | Daily ex. Sun | 37,069 |
| New Orleans | Tulane Hullabaloo | Weekly | 2,500 |
| New Orleans | Voce Coloniale | Weekly | ..... |
| New Roads | Parish Courier Journal | Weekly | ..... |
| | Pointe Coupee Banner | Weekly | ..... |
| Oakdale | American | Weekly | 1,350 |
| Oakdale | Journal | Weekly | 1,085 |
| Oak Grove | West Carroll Gazette | Weekly | 1,412 |
| Opelousas | Clarion News | Weekly | ..... |
| Opelousas | Herald | Semi-Weekly | 2,430 |
| Pineville | Rapides Gazette | Weekly | 1,458 |
| Pineville | Wildcat | Weekly | 400 |
| Plain Dealing | Progress | Weekly | 1,200 |
| Plaquemine | Iberville South | Weekly | 2,000 |
| Point A. La Hache | Plaquemines Gazette | Weekly | 405 |
| Ponchatoula | Enterprise | Weekly | 1,200 |
| Port Allen | Observer | Weekly | 1,314 |
| Rayne | Tribune | Weekly | 1,240 |
| Rayville | Richland Beacon-News | Weekly | ..... |

List of Louisiana Newspapers Appearing in the N. W. Ayer & Son's Directory of Newspapers and Periodicals for 1934, with Notations as to Being Daily or Weekly, etc., and Volume fo Such Circulation—Continued

| Place | Name | Kind | Circulation |
|---|---|---|---|
| Reserve | L'Observateur | Weekly | ..... |
| Roseland | Herald | Weekly | 450 |
| Ruston | Leader | Daily ex. Sun | 1,195 |
| Ruston | Leader | Weekly | 1,500 |
| Ruston | Tech Talk | Friday (Weekly) | 1,300 |
| Saint Francisville | Democrat | Weekly | ..... |
| Saint Joseph | Tensas Gazette | Weekly | 600 |
| St. Martinville | Messenger | Weekly | 425 |
| St. Martinville | St. Martin Banner | Weekly | 840 |
| [fol. 78] | | | |
| Shreveport | Baptist Message | Weekly | 20,274 |
| Shreveport | Centenary Conglomerate | Weekly | 800 |
| Shreveport | Journal | Daily ex. Sun | 22,187 |
| Shreveport | Sun (Negro) | Weekly | 9,522 |
| Shreveport | Times | Daily | 29,083 |
| | | Sunday | 41,617 |
| Slidell | News | Weekly | 1,750 |
| Tallulah | Madison Journal | Weekly | 540 |
| Thibodaux | Commercial Journal | Weekly | ..... |
| Thibodaux | Lafourche Comet | Weekly | 1,200 |
| Thibodaux | Lafourche Monitor (Negro) | Weekly | ..... |
| Ville Platte | Gazette | Weekly | ..... |
| Vivian | Caddo Citizen | Weekly | 722 |
| Welsh | Rice Belt Journal | Weekly | 750 |
| West Monroe | Ouachita Citizen | Weekly | 450 |
| Winnfield | News-American | Weekly | 1,500 |
| Winnfield | Winn Parish Enterprise | Weekly | 1,650 |
| Winnsboro | Franklin Sun | Weekly | 1,971 |

(Sgd.) J. H. Wade.

Sworn to and subscribed before me this, the 22nd day of November, 1934. (Sgd.) H. Carey Comish, Notary Public. (Seal.)

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[fol. 79] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF CHARLES J. RIVET—Filed Nov. 23, 1934

Charles J. Rivet, being duly sworn, did depose and say that he is an attorney-at-law duly licensed to practice in the Courts of the State of Louisiana.

That he was counsel for the officer acting for and on behalf of said State in each of the cases hereinafter mentioned from the incipiency of said matters until the final determination thereof. That all of said cases involved the validity of taxes sought to be collected on behalf of the State of Louisiana, and he makes this affidavit to show the

delay that elapsed from the institution of the actions until the decree of the Supreme Court, on appeal.

The case of State v. Chicago Hat Works was instituted in the Civil District Court for the Parish of Orleans on October 29, 1931; judgment of that Court was rendered November 16, 1931. The decree of the Supreme Court of Louisiana, the Court of final resort in that State, was rendered April 25, 1932. (Reported 141 So. 844, 174 La. 814.)

The case of State v. Milan Grain & Milling Co. was instituted in the Civil District Court for the Parish of Orleans on May 19, 1932; judgment of that Court was rendered June 10, 1932. The decree of the Supreme Court of Louisiana was rendered January 3, 1933. (Reported 146 So. 47, 176 La. 539.)

The case of State v. National Window Cleaning Co. was instituted in the Civil District Court for the Parish of Orleans on May 6, 1932; judgment of that Court was rendered June 6, 1932. The decree of the Supreme Court of Louisiana was rendered January 3, 1933. (Reported 145 So. 673, 176 La. 318.)

The case of State v. Leon Heymann was instituted in the Civil District Court for the Parish of Orleans on June 1, 1933; judgment of that Court was rendered on June 23, [fol. 80] 1933. The decree of the Supreme Court of Louisiana was rendered November 27, 1933. (Reported 151 So. 901, 178 La. 479.)

The case of Conway v. Lane Cotton Mills Co. was instituted in the Civil District Court for the Parish of Orleans on September 15, 1933; judgment of that Court was rendered October 18, 1933. The decree of the Supreme Court of Louisiana was rendered December 21, 1933. (Reported 152 So. 312, 178 La. 626.)

The case of State v. Wesson Oil & Snowdrift Co., Inc., was instituted in the Civil District Court for the Parish of Orleans on May 7, 1934; judgment of that Court was rendered on July 10, 1934. The decree of the Supreme Court of Louisiana was rendered October 29, 1934. (Not yet reported.)

In the year 1933 the Supreme Court of the State of Louisiana was in vacation from July 14, 1933, to October 3, 1933.

In the year 1934 the Supreme Court of the State of Louisiana was in vacation from July 2, 1934, to October 1, 1934.

All suits involving the constitutionality of a tax, or where

the collection of a tax is delayed, or the public fisc or the public interest is involved, or where the State or any subdivision or agency of the State is a party are entitled to be docketed by preference in the Supreme Court of the State of Louisiana, under Section 3, Rule 9, of said Court. See 171 La., p. X.

(Sgd.) Chas. J. Rivet.

Sworn to and subscribed before me, this 23rd day of November, A. D. 1934.

(Sgd.) P. H. Stern, Not. Pub. (Seal.)

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[fol. 81] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF FRANK C. CHEKAL—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, Frank C. Chekal, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Vivian, Parish of Caddo, State of Louisiana, age fifty-eight years. I have been in the newspaper business for thirty-four years, twenty-four years of which were spent in country work and seven years of which were spent in city work.

I am the owner and publisher of The Caddo Citizen, a weekly newspaper printed and issued out of my establishment in the Town of Vivian, Parish of Caddo, State of Louisiana. I have been in charge of this newspaper for the last four years.

Several years ago, whilst our country newspapers did get some commercial and foreign advertisement, consisting of Camel cigarettes, Chesterfield cigarettes, etc., and other forms of advertisement, commercial advertising has been practically taken out of the country newspaper. The big daily newspapers are continually, and have been continually, encroaching for the last few years upon the weekly

paper. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where the country paper circulates. In addition, the city daily newspapers of this State cover all of the territory of the State and are not restricted to a single parish in circulation, as is mainly the case with the weekly parish paper. [fol. 82] The daily papers throughout the State of Louisiana and, in my case, from the States of Arkansas and Texas, have adopted what is known as "routes"; they deliver by busses, or special delivery, and practically cover every parish in the State. Ten or twelve large newspapers, as a result of this scheme, have taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

My loss of foreign advertisement has gone so far as this: The daily papers, in the running of foreign advertisements, include in the advertisement a listing of my own Vivian merchants. As a consequence, there is less opportunity for me to get advertisement from my local merchants. The country newspapers, if they depended upon foreign and local advertising, could not exist. The majority of them must do, in addition to publishing a paper, a certain amount of job printing. This is our salvation and the only way that we can eke a livelihood.

The situation today is that there is a very limited business connection between the national advertising newspaper agencies and the country newspaper.

My approximate capital investment, including town lot, newspaper building, printing and equipment, is $6,500.00.

Annual income from all sources, approximately $4,500.00, which leaves no profit and very small allowance for personal salaries.

To operate my business, I do all the work I can myself. My wife does part of the writing, proof-reading, and attends to some collections. The only force in addition to my wife and myself which I employ consists of one apprentice.

The country papers of the State, because of local requirements and economic necessity, are doing the printing for the towns in which they live at less than the prices which the law allows, and in many cases these public accounts must be carried for an indefinite time.

(Sgd.) Frank C. Chekal.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934.

(Sgd.) H. Carey Comish, Notary Public. (Seal.)

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[fol. 83] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF HOWARD D. STROTHER—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, Howard D. Strother, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the City of Eunice, Parish of St. Landry, State of Louisiana; age, twenty-nine years; I have been in the newspaper business from youth, fifteen years of which were spent in country work and four years of which were spent in city work.

I control a majority of the stock of The New Era, a weekly newspaper printed and issued out of the plant of The New Era Publishing Co., Inc., in the City of Eunice, Parish of St. Landry, State of Louisiana. I have been in charge of this newspaper for the last seven years.

Several years ago rural publications did get some commercial and foreign advertisement, consisting of Ford, Chevrolet and General Motors, Camel, Chesterfield cigarettes, etc., and other forms of advertisement. Commercial advertising has been practically taken out of the country newspaper. The big daily newspapers are continually, and have been continually encroaching for the last few years upon the weekly paper. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where the country paper circulates. [fol. 84] In addition, the city daily newspapers of this State cover all of the territory of the State and are not restricted to a single parish in circulation, as is mainly the case with the weekly parish paper. For instance, in the case of our paper, The New Era, Eunice, Louisiana, we

have lost the greatest portion of our foreign advertising lineage, as described, through numerous invasions of the New Orleans and other Louisiana dailies, who, it is alleged, have followed the custom of national dailies, in asserting that their coverage is in excess to that of our publication and other country weeklies; such information coming to us from The American Press Association, one of our national advertising agencies, who claim that this condition exists generally. In addition to the above facts, some of these daily publications of Louisiana circulate in portions of Mississippi, and enjoy a fair circulation in the States of Texas, Alabama and Florida, plus a national circulation to some degree.

Secondly, bringing the competition closer to us, the Crowley Signal, the Lafayette Advertiser, and the Lake Charles American Press have been reported to claim a circulation as great as our own within our own territory and offer a substantial circulation in all the parishes around the cities in which they are published. These dailies have taken considerable foreign national advertising from our and other weekly publications in our immediate territory. In making this statement we are merely reciting the history of our foreign advertising loss and condition in our territory during the last five years. The situation is that today we have practically no such revenue.

The daily papers throughout the State have adopted what is known as "routes"; they deliver by busses, or special delivery, and practically cover every parish in the State. Ten or twelve large newspapers, as a result of this [fol. 85] scheme, have taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

Our loss of foreign advertisement has gone so far as this: The daily papers in the running of foreign advertising, such as automobile and radio advertising for instance, include in the advertisement a listing of our own business institutions. As a consequence, there is less opportunity for us to get advertising from our local auto and radio dealers. The country newspapers, if they depended upon foreign advertising, could not exist. The majority of them must do, in addition to publishing a paper, a certain amount of job printing. This is our salvation and the only way that we can eke a livelihood.

The situation today is that there is absolutely no business connection between the national advertising newspaper agencies and the country newspaper.

My approximate capital investment, including fixtures, stock and equipment, is $17,500.00.

To operate our business, I do all the work I can myself. I assist in keeping books, help in the mechanical department, solicit advertising, prepare news stories, read proof, and do other work in connection with the business. I attend to general collections, my wife and other relatives assisting. Our entire force, receiving pay, numbers only four, and one apprentice.

Our general opinion is that country newspapers are obtaining a goodly portion of their gross receipts from legal printing, municipal and parochial. Our opinion is this revenue in many instances represents about one-fourth (¼) of what the rate as fixed by law would be. The country papers of the State, because of local requirements and economic necessity, are doing this work at a reduction. One instance I know of is that at Ville Platte the city printing was done for a small monthly fee per year and for some [fol. 86] three or four years, until recently, the public printing in St. Landry has been done one-half (½) the rate.

We are of the view that ninety (90%) per cent of the country papers that are existing are those papers which maintain a job printing department. The job printing establishment must be up-to-date, such as to meet competition at the price made by city printing houses.

The proper division of news matter as compared to advertising matter in a newspaper would be thirty-three and one-third (33⅓%) per cent of the former and sixty-six and two-thirds (66⅔%) per cent of the latter. The majority of the country newspapers of Louisiana are carrying just the reverse; sixty-six and two-thirds (66⅔%) per cent of news matter to thirty-three and one-third (33⅓%) per cent of advertising matter.

In our city, Eunice, Moosa Garage, one car dealer, is taxed a specified amount for Dodge and Plymouth advertising, on every car sold. To date this advertising has never appeared in our paper. To the contrary, a portion is given to a New Orleans daily, with his name appearing in small type at the bottom of each advertisement, which usually appears in the Sunday edition. The above force-

fully demonstrates that we are not in competition with dailies. They, however, daily compete with weekly publications, the result being that our lineage has gradually shrunk.

It is further pointed out that revenues of weekly publications, ours included, have decreased so greatly that wages and salaries have been affected, many workmen eking out a bare existence at this time. The drive by dailies to obtain all national advertising is the largest contributing factor to this existence of this condition. Consequently, a tax upon country weeklies would be unjust, in many instances, [fol. 87] prohibiting their future operation as a small-town enterprise.

In our opinion, a majority of weeklies serve only as a civic institution and are treated as same by local business, who, desiring a newspaper, assist by giving display advertising and subscriptions at intervals. Such is not the case of large dailies, who are huge commercial enterprises, clearing a profit at every turn of the presses.

As in our case, the greater portion of weeklies carry mostly personal and society news, legal matter, municipal and parochial, which not only is their chief source of revenue, but the only reason for a majority of their subscribers. Such, in addition to the above facts enumerated, should illustrate that weeklies in no way compete with dailies, and only serve as a needed community asset

(Sgd.) Howard D. Strother.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934. (Sgd.) H. Carey Comish, Notary Public.

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[fol. 88] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF R. W. COLLIER—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, R. W. Collier, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Oakdale, Parish of Allen, State of Louisiana; age, forty-two years. I have been in the newspaper business for fifteen years, all years of which were spent in country work.

I am the publisher of The Oakdale Journal, weekly newspaper printed and issued out of my establishment in the Town of Oakdale, Parish of Allen, State of Louisiana. I have been in charge of this newspaper for the last five years.

A number of years ago I was enjoying a nice patronage from what is known as "foreign advertising agencies," who advertised such products as Camel, Lucky Strike, and Chesterfield cigarettes; General Motors products, various patent medicines, etc.

Gradually I have been losing this business to the daily newspapers, until my foreign advertising revenue is practically eliminated.

I have letters on file in my office from advertisers, to the effect that they are getting a good coverage in my territory, through metropolitan newspapers, at low cost, and for that reason do not advertise in my paper. I quote a paragraph from a letter of July 24, 1934, from the Shell Petro- [fol. 89] leum Corporation, at New Orleans, addressed to me as follows: "Our publication activities are confined to the metropolitan newspapers, which give us maximum coverage of our prospects at a low cost."

For at least four years my paper has been issued at a financial loss, and has survived only by the aid of our commercial printing department, which is operated by my wife and I, who do all the newspaper work, as well, including mechanical, editorial and clerical.

The daily papers throughout the State have adopted what is known as "routes"; they deliver by buses, or special delivery, and cover Allen parish thoroughly. Ten or twelve large newspapers, as a result of this scheme, have taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

(Sgd.) R. W. Collier.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934.

(Sgd.) H. Carey Comish, Notary Public.

[fol. 90] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF E. L. ENGERRAN—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of Washington, above State, E. L. Engerran, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Bogalusa, Parish of Washington, State of Louisiana; age, forty-one years. I have been in the newspaper business for twelve years, all of which were spent in country work.

I am the owner and publisher of The Bogalusa News, a weekly newspaper printed and issued out of my establishment in the Town of Bogalusa, Parish of Washington, State of Louisiana. I have been in charge of this newspaper for the last ten years.

In the last several years, whilst our country newspapers did get some commercial and foreign advertisement, consisting of General Motors, Camel, Chesterfield cigarettes, etc., and other forms of advertisement, commercial advertising has been practically taken out of the country newspaper. The big daily newspapers are continually, and have been continually encroaching for the last few years upon the weekly paper. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where the country paper circulates. In addition, the city daily newspapers of this State cover all of the ter- [fol. 91] ritory of the State and are not restricted to a single parish in circulation, as is mainly the case with the weekly parish paper.

For instance, in the case of my paper, The Times Picayune and the New Orleans Item at New Orleans, Louisiana, I have lost whatever quantity I had (which was never great) of foreign national advertisement of the type and character above described through two invasions of my business. First, the New Orleans newspapers have been

able to offer to the leading advertising agencies of America wider and more numerous circulation than my paper. They have made the above argument, and naturally secured the business away from my paper. The New Orleans papers have a circulation in my own territory as large as my own little paper has; then, in addition to that, cover all of the State of Louisiana and also a substantial part of the State of Mississippi, and enjoy additionally good circulation in the States of Texas, Alabama and Florida, plus a national circulation to some degree.

Secondly, bringing the competition closer to me, the Times Picayune and the New Orleans Item, naturally in their rights to secure business, have a circulation as great as my own within my own territory and offer a substantial circulation in all the parishes around the City of New Orleans. It got again some foreign national advertisement from my parish paper. I am not saying that this is not legitimate competition; I am merely reciting the history of my foreign advertisement in my weekly paper during the last four years. The situation is that today I have practically no such revenue.

The daily papers throughout the State have adopted what is known as "routes"; they deliver by busses, or special delivery, and practically cover every parish in the State. Ten or twelve large newspapers, as a result of this scheme, have [fol. 92] taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

My loss of foreign advertisement has gone so far as this: The daily papers, in the running of foreign advertisement, such as "Snow King Baking Pow-er," for instance, include in the advertisement a listing of my own Bogalusa merchants. As a consequence, there is less opportunity for me to get advertisement from my local merchants. The country newspapers, if they depended upon foreign and local advertising, could not exist. The majority of them must do, in addition to publishing a paper, a certain amount of job printing. This is our salvation and the only way that we can eke a livelihood.

The situation today is that there is but a small amount of business secured from national advertisers by weekly newspapers.

From actual figures, our publication has been printed at a loss for the past several years, and I am sure that if all weekly publishers in the State keep a cost record on their paper that they lose money each week.

In order to remain in business, I do all of my soliciting, attend to all office matters and supervise the entire plant, as well as a number of other duties.

My general opinion is that country newspapers are getting from Five Hundred ($500.00) Dollars and Eight Hundred ($800.00) Dollars annually for publishing proceedings, etc., of parish public bodies. My opinion is this revenue represents about one-fourth (¼) of what the rate as fixed by law would be. The country papers of the State, because of local requirements and economic necessity, are doing this work at a reduction. One instance I know of is that at New Roads the public printing was done for One [fol. 93] Dollar per year and for some three or four years the public printing in Washington Parish was done by me for One ($1.00) Dollar per year.

I am of the view the only country papers that are getting by are those papers which maintain a job printing department. The job printing establishment must be up-to-date, such as to meet competition at the price made by city printing houses.

The proper division of news matter as compared to advertising matter in a newspaper would be thirty-three and one-third (33⅓%) per cent of the former and sixty-six and two-thirds (66⅔%) per cent of the latter. The majority of the country newspapers of Louisiana are carrying just the reverse—sixty-six and two-thirds (66⅔%) per cent of news matter to thirty-three and one-third (33⅓%) per cent of advertising matter.

(Sgd.) E. L. Engerran.

Sworn to and subscribed before me this, the 13th day of November, A. D., 1934.

(Sgd.) H. Carey Comish, Notary Public. (Seal.)

[fol. 94] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF THOS. M. HOLLAND—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, Thos. M. Holland, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Greensburg, Parish of St. Helena, State of Louisiana; age, thirty-four years. I have been in the newspaper business for nine years, all of which were spent in country work.

I am the owner and publisher of The St. Helena Echo, a weekly newspaper printed and issued out of my establishment in the Town of Greensburg, Parish of St. Helena, State of Louisiana. I have been in charge of this newspaper for the last five years.

Several years ago, whilst our country newspapers did get some commercial and foreign advertisement, consisting of Ford, Chevrolet and General Motors, Camel, Chesterfield cigarettes, etc., and other forms of advertisement, commercial advertising has been practically taken out of the country newspaper. The big daily newspapers are continually, and have been continually, encroaching for the last few years upon the weekly paper. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where the country paper cir- [fol. 95] culates. In addition, the city daily newspapers of this State cover all of the territory of the State and are not restricted to a single parish in circulation, as is mainly the case with the weekly parish paper.

For instance, in the case of my paper, the St. Helena Echo, at Greensburg, Louisiana, I have lost whatever quantity I had (which was never great) of foreign national advertisement of the type and character above described through two invasions of my business. First, the New Orleans newspapers have been able to offer to the leading advertising agencies of America wider and more numerous

circulation than my paper. They have made the above argument, and naturally secured the business away from my paper. The New Orleans papers have a circulation in my own territory as large as my own little paper has, and one of them delivers at my own town by daybreak of each day; then, in addition to that, cover all of the State of Louisiana and also a substantial part of the State of Mississippi, and enjoy additionally good circulation in the States of Texas, Alabama and Florida, plus a national circulation to some degree.

The daily papers throughout the State have adopted what is known as "routes"; they deliver by busses, or special delivery, and practically cover every parish in the State. Ten or twelve large newspapers, as a result of this scheme, have taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

The country newspapers, if they depended upon foreign and local advertising, could not exist. The majority of them must do, in addition to publishing a paper, a certain amount of job printing. This is our salvation and the only [fol. 96] way that we can eke a livelihood.

The situation today is that there is absolutely no business connection between the national advertising newspaper agencies and the country newspaper. We are really in practically different businesses.

To operate my business, I do all the work I can myself. I keep books, set type by hand and do other work in connection with the business. I attend to general collections. My sister does part of the writing, proof-reading, and attends to some collections. The only force in addition to my sister and myself which I employ consists of one brother who only works part time.

My general opinion is that country newspapers are getting from Five Hundred ($500.00) Dollars and Eight Hundred ($800.00) Dollars annually for publishing proceedings, etc., of parish public bodies. My opinion is this revenue represents about one-fourth (¼) of what the rate as fixed by law would be. The country papers of the State, because of local requirements and economic necessity, are doing this work at a reduction.

I am of the view the only country papers that are getting by are those papers which maintain a job printing depart-

ment. The job printing establishment must be up-to-date, such as to meet competition at the price made by city printing houses.

(Sgd.) Thos. M. Holland.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934. (Sgd.) H. Carey Comish, Notary Public. (Seal.)

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[fol. 97] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF CLIFTON E. HARPER—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, Clifton E. Harper, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Minden, Parish of Webster, State of Louisiana; age, thirty-two years. I have been in the newspaper business for nine years of which were spent in country newspapers in Louisiana.

I am an owner and publisher of The Minden Herald and The Minden Signal Tribune, two weekly newspapers printed and issued out of my establishment in the Town of Minden, Parish of Webster, State of Louisiana. I have been in charge of these newspapers for the last five years.

In these last years, especially the last four years, whilst our country newspapers did get some commercial and foreign advertisement, consisting of Ford, Chevrolet and General Motors, Camel, Lucky Strike, Chesterfield cigarettes, etc., and other forms of advertisement, commercial advertising has been practically taken out of my country newspapers. The big daily newspapers are continually, and have been continually, encroaching for the last few years upon the weekly paper. They have circularized all national advertising agencies as well as employed their own repre-

sentatives to contact national advertising agencies, telling them that there is no use placing advertising in the weekly [fol. 98] papers; that they cover the field more cheaply; that they could not do this except for their large circulations. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where my country papers circulate. In addition, the city daily newspapers of this State cover all of the territory of the State and are not restricted to a single parish in circulation, as is mainly the case with the weekly parish paper.

Because the State of Louisiana has built many fine paved roads, the daily papers are therefore made more able to gain further circulation because of faster and quicker distribution, all of which makes it possible for them to avoid the Federal advertising percentage tax charged when placed in the post office for distribution. They avoid the post office and in place of it substitute their carriers.

For instance, in the case of my papers, The Signal-Tribune and The Minden Herald, at Minden, Louisiana, I have lost practically all national advertising I had (which was at one time considerable) of the type and character as well as others above described through two invasions of my business. First, the Shreveport newspapers have been able to offer to the leading advertising agencies of America wider and more numerous circulation in many places than my paper. They have made the above arguments, and naturally secured the business away from my papers. The Shreveport papers have a circulation in my own territory combined two-thirds as large as my own papers have; then, in addition to that, cover other portions of Louisiana, Arkansas and Texas.

Secondly, there is no competition on the part of my weekly newspapers against the large dailies, but, because of the advantages above mentioned in favor of the dailies, [fol. 99] they have become my competitor outside of their proper fields, claiming my rightful business and actually getting it because of cheaper advertising rates.

My loss of foreign advertising has gone so far as this: The daily papers in the running of foreign advertising, for instance, include in the advertisement a listing of my own Minden merchants. As a consequence, there is less opportunity for me to get advertisement from my local merchants. The country newspapers, if they depended upon

foreign and local advertising, could not exist. The majority of them must do, in addition to publishing a paper, a certain amount of job printing and legal advertising. This is our salvation and the only way that we can eke a livelihood.

The situation today is that there is very little business connection between the national advertising newspaper agencies and the country newspaper.

I am of the view the only country papers, as in my case, that are getting by are those papers which maintain a job printing department. The job printing establishment must be up-to-date, such as to meet competition at the price made by city printing houses.

The proper division of news matter as compared to advertising matter in a newspaper would be thirty-three and one-third (33⅓%) per cent of the former and sixty-six and two thirds (66⅔%) per cent of the latter. The majority of the country newspapers of Louisiana are carrying just the reverse—sixty-six and two-thirds (66⅔%) per cent of news matter to thirty-three and one-third (33⅓%) per cent of advertising matter.

(Sgd.) Clifton E. Harper.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934. (Sgd.) H. Carey Comish, Notary Public. (Seal.)

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[fol. 100] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF H. A. MANGHAM

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, H. A. Mangham, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Rayville, Parish of Richland, State of Louisiana; age, fifty-two years. I have

been in the newspaper business for forty years, all of which were spent in country work.

I am the owner and publisher of The Richland Beacon-News, a weekly newspaper printed and issued out of my establishment in the Town of Rayville, Parish of Richland, State of Louisiana. I have been in charge of this newspaper for the last thirty-two years.

In the last several years, whilst our country newspapers did get some commercial and foreign advertisement, consisting of Ford, Chevrolet and General Motors, Camel, Chesterfield cigarettes, etc., and other forms of advertisement, commercial advertising has been practically taken out of the country newspaper. The big daily newspapers are continually, and have been continually, encroaching for the last few years upon the weekly paper. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where the country paper circulates. In addition, the city daily newspapers [fol. 101] of this State cover all of the territory of the State and are not restricted to a single parish in circulation, as is mainly the case with the weekly parish paper.

For instance, in the case of my paper, The Richland Beacon-News, at Rayville, Louisiana, I have lost considerable of foreign national advertisement of the type and character above described. The Monroe and Shreveport newspapers have been able to offer to the leading advertising agencies of America wider and more numerous circulation than my paper. The Monroe papers have a circulation in my own territory nearly as large as my own paper has; then, in addition to that, cover a substantial part of the State of Louisiana, and enjoy additionally good circulation in the States of Texas and Arkansas.

The daily papers throughout the State have adopted what is known as "routes"; they deliver by busses, or special delivery, and practically cover every parish in the State. Ten or twelve large newspapers, as a result of this scheme, have taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

The situation today is that there is limited business connection between the national advertising newspaper agencies and the country newspaper.

To operate my business, I do all the work I can myself. I keep books, and do other work in connection with the business, such as proof-reading, and attend to some collections. The only force in addition to me and my son which I employ consists of one linotype operator and one negro janitor.

[fol. 102] I am of the view the only country papers that are getting by are those papers which maintain a job printing department. The job printing establishment must be up-to-date, such as to meet competition at the price made by city printing houses.

A number of years ago I made a talk at a meeting of the Louisiana Press Association in which I predicted the change coming to the country weeklies. I could see, with the advent of good roads and trucks delivering daily newspapers, daily, in nearly every part of the State, that the time would soon come when the dailies would have a circulation in every weekly's territory nearly as great as that of the weekly.

When this circulation was gained I thought I could see a time when the only service left to be rendered to the public would be purely local and social news and legal printing.

That time was reached within a very short time after the forecast made, and today we have left to us only such news as interests the immediate community and to act as a medium of publication of proceedings of local boards and legal printing.

The job department supplies the additional revenue to operate the business. Under present conditions, even with a fair amount of local job printing, there is a bare livelihood for the country weekly.

(Sgd.) H. A. Mangham.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934.

(Sgd.) H. Carey Comish, Notary Public. (Seal.)

[fol. 103] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF CARL GREMILLION—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, Carl Gremillion, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Marksville, Parish of Avoyelles, State of Louisiana; age, forty-one years. I have been in the newspaper business for twenty years, thirteen years of which were spent in country work and seven years of which were spent in city work.

I am the owner and publisher of The Weekly News, a weekly newspaper printed and issued out of my establishment in the Town of Marksville, Parish of Avoyelles, State of Louisiana. I have been in charge of this newspaper for the last ten years.

That, upon the request of the Attorney General, I selected, at random, from the newspaper exchange received at my office, for the week of November 3rd, 1934, selecting fourteen newspapers so as to make a fair geographical distribution over the State, and by actual measurement made a comparison of the advertisement space in each of these papers compared to the rest of the matter in each. The list below, giving the name of the newspaper and town of publication, with percentage of advertisement space of each newspaper, is a result of my study showing that the advertisement space on the average of the fourteen papers selected at random is only thirty-four (34%) per cent, leaving [fol. 104] sixty-six (66%) per cent of other matter:

[fol. 104]

| Name | Town | Percentage of Advertising |
|---|---|---|
| *Pointe Coupee Banner | New Roads, La | 24% |
| The Weekly News | Marksville, La | 35% |
| The Weekly Iberian | New Iberia, La | 29% |
| *St. Francisville Democrat | St. Francisville, La | 33% |
| The Natchitoches Enterprise | Natchitoches, La | 46% |
| Rayne Tribune | Rayne, La | 27% |
| The Mansfield Enterprise | Mansfield, La | 42% |
| The Melville Star | Melville, La | 22% |
| The Oakdale Journal | Oakdale, La | 32% |
| *The Enterprise | Ponchatoula, La | 26% |
| *St. Bernard Voice | Arabi, La | 46% |
| The Banner Democrat | Lake Providence, La | 36% |
| *The Colfax Chronicle | Colfax, La | 24% |
| Abbeyville Meridional | Abbeville, La | 52% |
| Total for 14 papers | | 473% |

Or an average of 33.8%.

* Including year of tax sales.

The schedule of such ratio for the operation of a successful newspaper from a money-making viewpoint, as advanced by the National Editorial Association of America, is just about the reverse of the above study; that is, it should be sixty-six and two-thirds (66⅔%) per cent of advertisement space as against only thirty-three and one-third (33⅓%) per cent of other matter.

(Sgd.) Carl Gremillion.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934.

(Sgd.) H. Carey Comish, Notary Public. (Seal.)

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[fol. 105] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF CARL GREMILLION—Filed Nov. 23, 1934

STATE OF LOUISIANA,

Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, Carl Gremillion, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Marksville, Parish of

Avoyelles, State of Louisiana; age, forty-one years. I have been in the newspaper business for twenty years, thirteen years of which were spent in country work and seven years of which were spent in city work.

I am the owner and publisher of The Weekly News, a weekly newspaper printed and issued out of my establishment in the Town of Marksville, Parish of Avoyelles, State of Louisiana. I have been in charge of this newspaper for the last ten years.

In the last several years, whilst our country newspapers did get some commercial and foreign advertisement, consisting of Ford, Chevrolet and General Motors, Camel, Chesterfield cigarettes, etc., and other forms of advertisement, commercial advertising has been practically taken out of the country newspaper. The big daily newspapers are continually, and have been continually, encroaching for the last few years upon the weekly paper. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where the country paper circulates. In addition, the city daily newspapers of this State cover all of the territory of the State and are not [fol. 106] restricted to a single parish in circulation, as is mainly the case with the weekly parish paper.

For instance, in the case of my paper, The Weekly News, at Marksville, Louisiana, I have lost whatever quantity I had (which was never great) of foreign national advertisement of the type and character above described through two invasions of my business. First, the New Orleans newspapers have been able to offer to the leading advertising agencies of America wider and more numerous circulation than my paper. They have made the above argument, and naturally secured the business away from my paper. The New Orleans papers have a circulation in my own territory as large as my own little paper has; then, in addition to that, cover all of the State of Louisiana and also a substantial part of the State of Mississippi, and enjoy additionally good circulation in the States of Texas, Alabama and Florida, plus a national circulation to some degree.

Secondly, bringing the competition closer to me, the Alexandria Town Talk, naturally in its right to secure business, has a circulation as great as my own within my own territory and offers a substantial circulation in all the par-

ishes around the City of Alexandria. It got again some foreign national advertisement from my parish paper. I am not saying that this is not legitimate competition; I am merely reciting the history of my foreign advertisement in my weekly paper during the last four years. The situation is that today I have practically no such revenue.

The daily papers throughout the State have adopted what is known as "routes"; they deliver by busses, or special delivery, and practically cover every parish in the State. Ten or twelve large newspapers, as a result of this scheme, [fol. 107] have taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

My loss of foreign advertisement has gone so far as this: The daily papers, in the running of foreign advertisement, such as "Snow King Baking Powder," for instance, include in the advertisement a listing of my own Marksville merchants. As a consequence, there is less opportunity for me to get advertisement from my local merchants. The country newspapers, if they depended upon foreign and local advertising, could not exist. The majority of them must do, in addition to publishing a paper, a certain amount of printing. This is our salvation and the only way that we can eke a livelihood.

The situation today is that there is absolutely no business connection between the national advertising newspaper agencies and the country newspaper.

My approximate capital investment, including town lot, newspaper building, printing and equipment, is $18,400.00; replacement value.

An approximate statement of my yearly revenues and expenses would be as follows:

Revenues

| | | |
|---|---|---|
| Subscriptions | $400.00 | |
| Job Printing | 4,075.00 | |
| Commercial advertising | 225.00 | |
| Judicial and legal advertising | 2,300.00 | |
| Total | | $7,000.00 |

Expenses

| | | |
|---|---|---|
| Interest, 5% on $8,000 capital investment | $400.00 | |
| Taxes | 300.00 | |
| Help | 1,200.00 | |
| Materials and stock | 2,000.00 | |
| Power and telephone, carriage, etc. | 500.00 | |
| Total | | 4,400.00 |
| Net Profit | | $2,600.00 |

[fol. 108] To operate my business, I do all the work I can myself. I keep books, run a linotype machine and do other work in connection with the business. I attend to general collections. My wife does part of the writing, proof-reading, and attends to some collections. The only force in addition to my wife and myself which I employ consists of one journeyman printer and one negro janitor.

My general opinion is that country newspapers are getting from Five Hundred ($500.00) Dollars and Eight Hundred ($800.00) Dollars annually for publishing proceedings, etc., of parish public bodies. My opinion is this revenue represents about one fourth (¼) of what the rate as fixed by law would be. The country papers of the State, because of local requirements and economic necessity, are doing this work at a reduction. One instance I know of is that at New Roads the public printing was done for One ($1.00) Dollar per year and for some three or four years the public printing in Avoyelles Parish was done by me for One ($100.00) Dollars per year.

I am of the view the only country papers that are getting by are those papers which maintain a job printing department. The job printing establishment must be up-to-date, such as to meet competition at the price made by city printing houses.

The proper division of news matter as compared to advertising matter in a newspaper would be thirty-three and one-third (33⅓%) per cent of the former and sixty-six and two-thirds (66⅔%) per cent of the latter. The majority of the country newspapers of Louisiana are carrying just the reverse—sixty-six and two-thirds (66⅔%) per cent of news

matter to thirty-three and one-third (33⅓%) per cent of advertising matter.

[fol. 109] By actual count, 87% of my subscribers are within the Parish of Avoyelles and only 13% outside of the Parish of Avoyelles.

(Sgd.) Carl Gremillion.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934. (Sgd.) H. Carey Comish, Notary Public.

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[fol. 110] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF BENJAMIN J. DICHARRY—Filed Nov. 23, 1934

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Personally came and appeared before me, the undersigned authority, a notary public, duly commissioned in and for the Parish of East Baton Rouge, above State, Benjamin J. Dicharry, well and personally known to me, who, after being duly sworn, deposes and says:

I am a citizen of the United States and of the State of Louisiana, a resident in the Town of Convent, Parish of St. James, State of Louisiana; age, forty-one years. I have been in the newspaper business for thirteen years, all of which were spent in country work.

I am part owner and publisher of The Interim, a weekly newspaper printed and issued out of our establishment in the Town of Convent, Parish of St. James, State of Louisiana. I have been in charge of this newspaper for the last eleven years.

Several years ago, whilst our country newspapers did get some commercial and foreign advertisement, consisting of Ford, Chevrolet and General Motors, Camel, Chesterfield cigarettes, etc., and other forms of advertisement, commercial advertising has been practically taken out of the country newspaper. The big daily newspapers are continually, and have been continually, encroaching for the last few years upon the weekly paper. As a result they have practically gained all foreign advertisement, due to their large circulation in the field where the country paper circulates.

In addition, the city daily newspapers of this State cover all of the territory of the State and are not restricted to a single parish in circulation, as is mainly the case with the weekly parish paper.

[fol. 111] For instance, in the case of my paper, The Interim, at Convent, Louisiana, I have lost whatever quantity I had (which was never great) of foreign national advertisement of the type and character above described through the invasion of the large dailies. First, the New Orleans newspapers have been able to offer to the leading advertising agencies of America wider and more numerous circulation than my paper. The New Orleans papers have a circulation in my own territory as large as my own little paper has; then, in addition to that, cover all of the State of Louisiana and also a substantial part of the State of Mississippi, and enjoy additionally good circulation in the States of Texas, Alabama and Florida, plus a national circulation to some degree.

The daily papers throughout the State have adopted what is known as "routes;" they deliver by buses, or special delivery, and practically cover every parish in the State. Ten or twelve large newspapers, as a result of this scheme, have taken advantage of the country newspapers in securing advertising which we formerly carried, due to their large and wide circulation.

There is no competition by my paper with the daily newspapers on national advertising. The situation today is that there is absolutely no business connection between the national advertising newspaper agencies and the country newspaper.

To operate my business, I employ only one printer. I keep books and attend to general collections. I am also the principal of the Romeville High School.

In order to provide my readers with features for which I was unable to pay directly, I added "patent inside" to my newspaper several months ago. Along with this service goes some foreign advertising for which, contrary to belief, [fol. 112] my paper gets not a red copper cent. This is not in competition with metropolitan newspapers.

(Sgd.) B. J. Dicharry.

Sworn to and subscribed before me this, the 13th day of November, A. D. 1934. (Sgd.) H. Carey Comish, Notary Public. (Seal.)

[fol. 113] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION

No. 315—Equity

AMERICAN PRESS COMPANY, INC., et al.,

versus

ALICE LEE GROSJEAN, Supervisor of Public Accounts for the State of Louisiana

Clement M. Moss; Taylor, Porter & Brooks (Ben B. Taylor, Advocate); Deutsch, Kerrigan & Burke (Eberhard P. Deutsch, Advocate); Tucker & Mason; Mouton & Davison; Thornton, Gist & Richey; Spencer, Gidiere, Phelps & Dunbar (Esmond Phelps, Advocate); Elisha Hanson, Bennett C. Clark, Advocate, Attorneys for Plaintiffs.

Gaston L. Porterie, Attorney General of the State of Louisiana, and Chas. J. Rivet, Special Asst. to the Attorney General, State of Louisiana, Counsel for Defendant.

Before Foster, Circuit Judge, and Dawkins and Borah, District Judges

**Findings of Fact and Conclusions of Law**—Filed March 22, 1935

BORAH, District Judge:

This is a suit in equity attacking the constitutionality of Act 23 of the General Assembly of Louisiana of 1934, and seeking to enjoin its enforcement. The nine plaintiffs who have initiated this action are Louisiana corporations, each of whom own and publish one or more newspapers in various cities of this State. The defendant is the State official who is charged with the duty of administering and enforcing the provisions of this Act and of collecting the license taxes sought to be imposed thereby. On motion of the attorneys for the plaintiffs a district court of three judges was organized and convened to hear its application for an interlocutory injunction, a preliminary restraining order having been granted after notice and hearing because of the danger of irreparable injury being caused to plaintiffs before a hearing could be had and the matter determined on said application for interlocutory injunction. After a full hearing, at which evidence was introduced in the form

of affidavits and argument had by counsel, the Court is of the opinion that defendant's plea to the jurisdiction should be dismissed, and that plaintiffs' prayer for an interlocutory injunction should be granted, and makes the following findings of fact and conclusions of law:

[fol. 114] FINDINGS OF FACT

The verified pleadings and affidavits filed herein show that the nine plaintiffs are Louisiana corporations, each of whom own and publish one or more newspapers in seven of the principal cities of the State. In the aggregate, fifteen newspapers are published by the plaintiffs and of that number all save two have a circulation of more than 20,000 copies per week within the State of Louisiana. There are no newspapers, magazines, periodicals or other publications published within the State of Louisiana having a circulation of more than 20,000 copies per week, except the thirteen newspapers owned and published by petitioners. However, there are published within the State of Louisiana four daily newspapers having a circulation of but slightly less than 20,000 copies per week, and these newspapers, with but one minor exception, compete with all of the newspapers published by petitioners both as to circulation and advertising. The same competition exists in a modified degree with reference to the 120 weekly newspapers published in the State, though none of them have a circulation of as much as 20,000 copies per week. In fine there are approximately 163 publications published in the State of Louisiana that are engaged in the business of selling and publishing advertising, and of that number the thirteen newspapers owned and published by plaintiffs are the only ones sought to be taxed by this Act.

The bill of complaint alleges and the affidavits shows that there are six principal media of advertising, and that there was spent throughout the United States during the year 1933 for such advertising approximately the following:

| | |
|---|---|
| (1) Newspaper advertising | $453,000,000.00 |
| (2) Magazine advertising | 137,000,000.00 |
| (3) Radio broadcast advertising | 57,000,000.00 |
| (4) Outdoor advertising | 40,000,000.00 |
| (5) Street car card advertising | 11,000,000.00 |
| (6) Motion picture advertising—less than | 10,000,000.00 |
| Total | $708,000,000.00 |

It further appears that in the State of Louisiana the revenue derived by these various media of advertising is in substantially the above ratio.

[fol. 115] The newspapers in question and all newspapers in general derive their revenues almost entirely from monies paid by regular subscribers or purchasers of said publications and from monies paid for the insertion of advertisements therein. Of the income thus realized, that which is derived from circulation constitutes a substantial part of the total revenue though it falls far short of meeting the cost of production and varies materially in its ratio to advertising revenue with respect to particular publications. While it is undoubtedly true that volume of circulation is a factor to be considered in fixing advertising rates, it is only one of several factors. The character of circulation, the competitive conditions in the particular territory served by the newspaper, the economic conditions prevailing in the territory and other factors are of great importance.

The statute complained of, Act 23 of the General Assembly of Louisiana of 1934, provides in Section 1(a):

"That ever- person, firm, association or corporation, domestic or foreign, engaged in the business of selling, or making any charge for, advertising or for advertisements, whether printed or published, or to be printed or published, in any newspaper, magazine, periodical or publication whatever having a circulation of more than 20,000 copies per week, or displayed and exhibited, or to be displayed and exhibited by means of moving pictures, in the State of Louisiana, shall, in addition to all other taxes and licenses levied and assessed in this State, pay a license tax for the privilege of engaging in such business in this State of two per cent (2%) of the gross receipts of such business."

It further provides, in substance, that all persons subject to said Act shall, on the 1st day of October, 1934, and every three months thereafter, file with the Supervisor of Public Accounts a sworn report showing the amount of gross receipts for its business during the preceding three months (except that the report due October 1st, 1934, shall be for the period from August 1st to September 30, 1934), and shall accompany such report with a remittance of the amount of tax due as shown thereby. The taxes become

due on the last day of each quarter and bear interest from their due date at the rate of one per cent per month. In the event it becomes necessary to enforce payment of any [fol. 116] tax due under the Act, the Supervisor of Public Accounts is authorized to institute suit for the amount of the tax and interest, and may also include in such suit a demand for a penalty of 25% of the amount of the tax and interest as attorneys' fees, which penalty is imposed upon any taxpayer against whom it is necessary to proceed, and shall be taxed as costs and included in the judgment rendered; execution of which judgment shall take place as provided by existing laws. In addition to this penalty the Act further provides, in Section 9, that—

"It shall be unlawful for any person, firm, association or corporation required to file a report or to pay a tax by this Act or by any regulation issued under authority thereof or any managing agent or officer of any such firm, association or corporation—

1. To fail, neglect or refuse to file the aforesaid sworn report at the time and in the manner and form prescribed, or to pay any tax due under this Act prior to its becoming delinquent; and

2. To make any false statement in said sworn report, or to make any false representations to the Supervisor of Public Accounts as to any tax levied by this Act.

And any person violating any provision of this Act shall be deemed guilty of a misdemeanor and, on conviction shall be fined not exceeding Five Hundred Dollars ($500.00) or imprisoned not exceeding six months, or both, at the discretion of the court, for each violation.

As to corporations violating this Act, there shall be recovered, at the suit of the district attorney, an amount not exceeding Five Hundred Dollars ($500.00) for each violation."

The plaintiffs contend that this license tax is discriminatory and arbitrary and imposes upon plaintiffs burdens that are not imposed upon others engaged in like business in the State of Louisiana, and that because of the imposition of the unreasonable, arbitrary and discriminatory license taxes provided by said statute it is violative of the

provisions of Section 8 of Article X of the Constitution of Louisiana of 1921 which provides:

[fol. 117] "License taxes may be levied on such classes of persons, associations of persons and corporations, pursuing any trade, business, occupation, vocation or profession, as the Legislature may deem proper, except clerks, laborers, ministers of religion, school teachers, graduated trained nurses, those engaged in mechanical, agricultural or horticultural pursuits, or in operating sawmills. Such license taxes may be classified graduated or progressive."

It is further urged that the statute is in conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States in that it denies to the plaintiffs the equal protection of the laws.

The constitutional invalidity of the statute is further assailed on the ground that it is violative of the provisions of Section 3 of Article 1 of the Constitution of Louisiana of 1921, that "no law shall ever be passed to curtail or restrain the liberty of speech or of the press." Furthermore, that it is violative of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law," which amendment secures against State action that freedom of the press guaranteed by the First Amendment to the Constitution of the United States.

We find it necessary to consider only the first and second grounds of attack.

## Conclusions of Law

Act 23 of the Louisiana Legislature of 1934 imposes a license tax on persons engaged in the sale of advertising. The Act in terms applies only to those publications within the State having a circulation of more than 20,000 copies per week. If the weekly circulation of any publication is less than that amount, it is free from legislative restrictions. It matters not what publications it may affect today

or in the future, the express declaration of the statute is that publications having a circulation in excess of a certain amount shall be subjected to this regulations and that all others having less circulation shall be free from its provisions.

[fol. 118] The only question that need be considered is whether in the restraint which the legislature of Louisiana has attempted to impose upon these plaintiff companies, it has violated Section 8 of Article 10 of the Constitution of this State and trespassed upon those rights which by the Constitution of the United States are secured to every individual against state action.

We think that Act 23 of 1934 not only violates the Constitution of this State, but that it is also violative of the Fourteenth Amendment of the Constitution of the United States in that it does not represent a legitimate exertion of the power of classification, is purely arbitrary and denies the equal protection of the laws to those against whom it discriminates. Its constitutionality cannot be upheld on the theory that the classification adopted by the Legislature is a rational one, in that the newspapers in Louisiana having a circulation of 20,000 copies or less constitute a class of country journals, with little equipment, few employees and small assets, which use methods of operation entirely different to the metropolitan newspapers operating in the State and having a circulation of more than 20,000 copies per week. The fact that there is a difference between the urban and metropolitan press is not sufficient to meet the requirement that the classification always 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' Louisville Gas Co. vs. Coleman, 277 U. S. 32; The Stewart Dry Goods Co. v. John B. Lewis et al., — U. S. — (decided March 11, 1935).

If the State, upon the same classification which it is seeking to uphold, had reversed the process and taxed the country journals and exempted the metropolitan newspapers the inequality probably would be readily conceded, but the constitutional infirmity, though more strikingly apparent, would have been the same.

While recognizing the power of the State to classify for purposes of taxation, it must also be remembered that the

equal protection of the laws is guaranteed, and that such equal protection is denied where as here the Act makes positive and direct discrimination between persons engaged in the same class of business. No one will presume to say that a newspaper whose circulation is 20,000 copies per [fol. 119] week is not doing precisely the same business as one whose circulation is slightly below that figure.

Let a decree be prepared and presented in accordance herewith.

(Signed) Rufus E. Foster, U. S. Circuit Judge.
(Signed) Ben C. Dawkins, U. S. District Judge.
(Signed) Wayne G. Borah, U. S. District Judge.

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[fol. 120] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION OF COUNSEL THAT CASE BE SUBMITTED FOR FINAL TRIAL ON SAME PLEADINGS AND EVIDENCE AS WAS PRODUCED AT HEARING ON PRELIMINARY INJUNCTION, ETC. —Filed April 5, 1935

It is stipulated and agreed, by and between Clement M. Moss, Taylor, Porter & Brooks, Deutsch & Kerrigan & Burke, Tucker & Mason, Mouton & Davidson, Thornton, Gist & Richey, Spencer, Gidiere, Phelps & Dunbar, and Bennett C. Clark; attorneys for American Press Company, Inc., Capital City Press, Item Company, Ltd., Journal Publishing Co., Inc., Lafayette Advertiser-Gazette, Inc., McCormick & Company, Inc., News-Star-World Publishing Company, Inc., The Times-Picayune Publishing Company and Times Publishing Company, Ltd., plaintiffs herein, and Gaston L. Porterie, Attorney General, and Charles J. Rivet, Special Assistant Attorney General, attorneys for Alice Lee Grosjean, Supervisor of Public Accounts, defendant herein, that this case be and it hereby is submitted for final trial upon the same pleadings and evidence as was had and produced before the Court at the hearing upon the application for a preliminary injunction, and that the matter is herewith submitted to the Court for final decision without further argument, but with renewal and full reser-

vation of all motions, pleas and defenses urged against the issuance of the preliminary injunction.

(Signed) Gaston L. Porterie, Attorney General of Louisiana, by (Signed) Chas. J. Rivet, Special Asst. to Atty. Gen'l of La. (Signed) Clement M. Moss, (Signed) Taylor, Porter & Brooks, (Signed) Deutsch & Kerrigan & Burke, (Signed) Tucker & Mason, (Signed) Thornton, Gist & Richey, (Signed) Spencer, Gidiere, Phelps & Dunbar, (Signed) Bennet C. Clark, Attys. for Plaintiffs.

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[fol. 121] IN UNITED STATES DISTRICT COURT IN AND FOR THE EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION

No. 315

In Equity

AMERICAN PRESS COMPANY, INC., et al.

vs.

ALICE LEE GROSJEAN, Supervisor of Public Accounts

DECREE OF PERMANENT INJUNCTION—April 8, 1935

This cause having come on for hearing on the 23rd day of November, 1934, on the application of the plaintiffs for a preliminary injunction;

And said cause having been submitted on said day for adjudication upon the pleadings and the evidence and after hearing the argument of counsel;

And the Court having on March 22nd, 1935, filed its written opinion holding that, for the reasons therein stated, plaintiffs were entitled to the issuance of a preliminary injunction as prayed for;

And the Court having, on April 4, 1935, entered a decree, pursuant to said written opinion, directing the issuance of a preliminary injunction as prayed for upon plaintiffs furnishing a joint bond in the sum of One

Thousand ($1,000.00) Dollars, and said bond having been furnished;

And there having been filed on April 5th, 1935, a stipulation signed by counsel for the various parties, agreeing that said cause should be submitted for final trial upon the same pleadings and evidence as was had and produced before the Court at the hearing on November 23rd, 1934, upon the application for a preliminary injunction, and that the matter should be submitted to the Court for final decision without further argument;

It is ordered, adjudged and decreed that the motion of defendant to dismiss the petition of plaintiffs for want of jurisdiction and of a cause of action be, and the same is, hereby dismissed.

[fol. 122] It is further ordered, adjudged and decreed that the alternative motion of defendant to strike paragraphs VIII and XI of plaintiffs' petition be, and the same is, hereby denied.

It is further ordered, adjudged and decreed that the further alternative motion of defendant to require plaintiffs to particularize and to make more certain and definite the allegations of paragraphs IV, V, VIII and XXI of their petition be, and the same is, hereby denied.

It is further ordered, adjudged and decreed that Act 23 of the Regular Session of the Legislature of Louisiana for the year 1934 be, and it is hereby, set aside as unconstitutional, null and void, and that defendant, Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, her agents, attorneys, representatives and any and all persons acting under her direction, control and authority, and each of them, be, and they are hereby, permanently enjoined from attempting in any manner whatsoever to enforce any of the provisions of said Act as against plaintiffs, or any of them, or from seeking to collect from plaintiffs, or any of them, by suit or otherwise, the taxes sought to be imposed by said Act, or from requiring plaintiffs, or any of them, to make the reports required by said Act, or from attempting, under the authority of said Act, to examine any of the books, records and other documents of the plaintiffs, or any of them.

It is further ordered, adjudged and decreed that defendant, Alice Lee Grosjean, Supervisor of Public Ac-

counts of the State of Louisiana, pay the costs of this proceeding.

This decree rendered, signed and filed on the 8th day of April, 1935.

(Signed) Rufus E. Foster, United States Circuit Judge. (Signed) Ben C. Dawkins, United States District Judge. (Signed) Wayne G. Borah, United States District Judge.

Approved as to form; all rights reserved.

(Signed) Gaston L. Porterie, Atty. Genl. of La., by Chas. J. Rivet. (Signed) Chas. J. Rivet, Special Asst. to Atty. Gen'l of La.

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[fol. 123] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed June 20, 1935

To the Honorable Rufus E. Foster, Ben C. Dawkins and Wayne G. Borah, Judges of the United States, Convened as a Special Statutory Court under Section 266 of the Judicial Code (28 U. S. C. A. 380):

The petition of Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, through Gaston L. Porterie, Attorney General of Louisiana, and Charles J. Rivet, Special Assistant to said Attorney General and Special Counsel for the said defendant, respectfully represents:

A decree of permanent injunction was entered herein against petitioner as Supervisor of Public Accounts of the State of Louisiana.

Petitioner is aggrieved by the said decree of injunction, which, for the reasons set forth in the assignment of errors, attached hereto, is contrary to law and operates to her prejudice and injury.

From the said decree petitioner desires to appeal to the Supreme Court of the United States.

Wherefore, petitioner prays that an appeal may be allowed to her from said decree to the Supreme Court of

the United States, and that proper order as to the security for costs required of her be made.

(Signed) Gaston L. Porterie, Attorney General.
(Signed) Chas. J. Rivet, Special Asst. to Atty. Gen'l, Counsel for Alice Lee Grosjean, Supervisor of Public Accounts of Louisiana.

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ORDER

Considering the foregoing petition, an appeal to the Supreme Court of the United States is hereby allowed and granted to the petitioner, Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana; said petitioner to furnish bond in the sum of Five Hundred Dollars.

June 20th, 1935.

(Signed) Wayne G. Borah, Judge, U. S. District Court for the Eastern District of Louisiana.

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[fol. 124] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 20, 1935

Alice Lee Grosjean, Supervisor of Public Accounts of the State of Louisiana, in connection with her petition for an appeal to the Supreme Court of the United States from the permanent injunction decreed against her in the above numbered and entitled cause, assigns the following errors which entitle her to a reversal of the said decree:

1. The Court erred in assuming jurisdiction of this cause where the bill, filed by nine corporations all organized and existing under the laws of Louisiana and domiciled in said State, failed to aver facts affirmatively showing that the disputed tax was of the required jurisdictional sum.

2. The Court erred in denying defendant's motion to dismiss the bill for lack of an affirmative showing of a matter in controversy of the required sum.

3. The Court erred in taking jurisdiction where the averments of the bill of complaint were evidently made for the

purpose of creating a case cognizable by the United States Court where none in fact exists.

4. The Court erred in maintaining jurisdiction after it was established by evidence that there was no matter in controversy of the required amount as to any of the plaintiffs but one.

5. The Court erred in denying the motion to dismiss for lack of equity where the bill failed to allege any facts justifying equitable interference by injunction.

6. The Court erred in issuing an injunction against an officer of a State, clothed with authority to enforce a law of said State, where no great or irreparable injury is shown by the bill, or by the evidence, to be imminent or to have been threatened.

7. The Court erred in enjoining a State officer from bringing a suit for the enforcement of a State statute.

8. The Court erred in granting an injunction the effect of which was to nullify Section 265 of the Judicial Code and the Amendment of March 4, 1913, to Section 266 of the Judicial Code.

9. The Court erred in enjoining the collection of a tax levied by the State of Louisiana where such tax is collectible only by suit.

[fol. 125] 10. The Court erred in denying defendant's motion to strike the irrelevant and scandalous matter contained in the bill of complaint.

11. The Court erred in holding that Act No. 23 of 1934 (La.) does not represent a legitimate exercise of the State's power of classification for purposes of taxation.

12. The Court erred in holding that the classification under said statute denies the equal protection of the laws to the plaintiffs in violation of the Fourteenth Amendment.

13. The Court erred in holding that the difference between the business of selling advertisement in small weekly country journals and that of selling advertisement in metropolitan newspapers is insufficient to furnish a basis for reasonable classification for purposes of license or excise taxation.

14. The Court erred in denying the State's power to grant exemptions to certain classes.

Wherefore, the decree of permanent injunction complained of should be reversed, recalled and vacated and the bill of the plaintiffs dismissed at their costs.

(Signed) Gaston L. Porterie, Attorney General;
(Signed) Chas. J. Rivet, Special Asst. to Atty. Gen'l, Counsel for Alice Lee Grosjean, Supervisor of Public Accounts of Louisiana.

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[fols. 126-132] Bond on Appeal for $500.00, approved and filed June 20, 1935, omitted in printing.

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[fols. 133 & 134] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 135] UNITED STATES SUPREME COURT

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—Filed Aug. 2, 1935

Comes now the appellant in the above entitled cause and states that the points upon which she intends to rely in this Court in this case are as follows:

I

Jurisdiction

(a) Jurisdiction in this case depends upon a matter in controversy exceeding the sum or value of $3,000.00.

(b) Facts upon which the jurisdiction of Federal courts rests must be positively averred; general averments that the amount or value in controversy exceeds the required sum is a mere conclusion.

(c) A bill which fails to positively aver an amount or value in controversy exceeding the required sum must be dismissed.

(d) The value of the disputed tax alone determines the jurisdictional amount. The penalty or loss, which payment of the tax would avoid, are not included.

(e) When several plaintiffs unite in a single suit, it is essential that the demand of each be of the requisite jurisdictional amount.

(f) Where diversity of citizenship does not exist there must be a federal question, not in mere form, but in substance, and not in mere assertion, but in essence and effect.

II

Impropriety of Equitable Interference

(a) A Federal Equity Court should not interfere with the enforcement of a law of one of the sovereign States merely because of its asserted illegality or unconstitutionality.

(b) A bill which fails to show that great or irreparable injury is imminent or has been threatened, and fails to allege any other facts justifying equitable interference by injunction, should be dismissed.

(c) Where State taxes are collectible only by judicial [fol. 136] proceedings, a Federal Equity Court should not enjoin the collection of the tax.

III

That Which the Law Forbids to Be Done Directly Cannot Be Done Indirectly

(a) The granting of a restraining order, followed by an interlocutory injunction, and perpetuated by a permanent injunction, forbidding an officer of a State from bringing suit in a State Court for the enforcement or execution of a statute of the State, violates Sections 265 and 266 of the Judicial Code.

(b) Where a State Tax is collectible only by suit, no Court of the United States has power to enjoin the bringing of such suit.

## IV

### Matters Not Justiciable, or Impertinent or Scandalous, Should, on Motion, Be stricken from the Bill

Allegations that are purely argumentative; matter that is impertinent, scandalous or libelous; allegations concerning persons not connected with the suit; and matters that are not justiciable; may be properly objected to by motion to strike, and should be stricken from the pleadings.

## V

### Freedom of the Press

(a) The First Amendment to the Constitution does not prohibit a State from abridging freedom of speech or of the press.

(b) Corporations are not citizens of the United States and can claim no privileges and immunities as such.

(c) The Constitution of Louisiana does not exempt the press from taxation.

## VI

### Classification—Denial of Equal Protection

(a) A State does not deny the equal protection of the laws merely by adjusting its revenue laws and taxing system in such a way as to favor certain industries or form of industries. It is not bound by an iron rule of equal taxation. It may exercise its discretion in the selection of subjects, or the classification of properties, businesses, trades, callings, or occupations.

(b) Courts have no right to consider the propriety or justice of a tax, to seek for the motives, or to criticize the public policy which prompted the adoption of the legislation.

(c) It is the duty of Courts to sustain legislative classifications if there are differences between the occupations separately classified.

[fol. 137] (d) The burden rests upon one assailing the Constitutionality of a legislative classification to show that it is unreasonable and essentially arbitrary.

(e) The Constitution of Louisiana vests unlimited power in the Legislature of the State to classify for license taxes as it may deem proper.

The appellant further represents that the whole of the record, as filed, is necessary for the consideration of the case, except the bond and citations upon this appeal, the præcipe and proof of service.

Gaston L. Porterie, Attorney General of Louisiana;
Chas. J. Rivet, Special Assistant to the Attorney General of Louisiana, Counsel for Alice Lee Grosjean, Supervisor of Public Accounts of Louisiana, Appellant.

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[fol. 138] PROOF OF SERVICE OF STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY

Charles J. Rivet, being duly sworn, did depose and say: That as counsel for appellant in the above numbered and entitled cause he did, on August 1, 1935, serve on each of the appellees a true copy of appellant's definite statement of points on which she intends to rely and of the parts of the record which she thinks necessary for the consideration thereof.

That said service was made by enclosing said copy in envelopes addressed, respectively, to each of the appellees, and sent by registered mail (return receipt requested), deposited in the New Orleans Post Office, as follows:

American Press Company, Inc., Lake Charles, Louisiana.
Capital City Press, Baton Rouge, Louisiana.
Item Company, Ltd., New Orleans, Louisiana.
Journal Publishing Company, Inc., Shreveport, Louisiana.
Lafayette Advertiser-Gazette, Inc., Lafayette, Louisiana.
McCormick & Company, Inc., Alexandria, Louisiana.
News-Star-World Publishing Company, Inc., Monroe, Louisiana.
The Times Picayune Publishing Company, New Orleans, Louisiana.
Times Publishing Company, Ltd., Shreveport, Louisiana.

Chas. J. Rivet.

Sworn to and subscribed before me this 1st day of August, 1935.

P. H. Stern, Notary Public. (Seal.)

[fol. 139] [File endorsement omitted.]

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Endorsed on cover: File No. 39,857. E. Louisiana, D. C. U. S. Term No. 303. Alice Lee Grosjean, Supervisor of Public Accounts for the State of Louisiana, Appellant, vs. American Press Company, Inc., et al. Filed July 29, 1935. Term No. 303, O. T. 1935.

(7161-C)